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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91263510
Party	Plaintiff Traxxas, L.P.
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Submission	Motion to Compel Discovery or Disclosure
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Signature	/Gregory W. Carr/
Date	07/09/2021
Attachments	Traxxas LP v. Mattel Inc. - Motion to Compel 7-9-2021.pdf(3746469 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TRAXXAS, L.P.	§	Opposition No.: 91263510
	§	
Opposer	§	
	§	
v.	§	
	§	
Mattel, Inc.	§	
	§	
Applicant	§	Application No.: 88583445
	§	Mark: MIGHTY MAX

**OPPOSER TRAXXAS, L.P.’S (SECOND) MOTION TO COMPEL**

Opposer Traxxas, L.P. (“Opposer”), hereby moves the Board to compel Applicant Mattel, Inc. (“Applicant”) to produce all responsive documents Applicant indicated it would produce in its responses to Opposer’s First Set of Interrogatories and First Set of Production Requests (“Opposer’s Discovery Requests”).<sup>1</sup>

**A. Introduction.**

This motion seeks to compel production of documents Applicant refuses to produce, improperly claiming (1) the Board order issued on April 23, 2021 (the “April 23 Order”)<sup>2</sup> suspending this proceeding also suspends Applicant’s obligation to respond to discovery served months before the suspension and (2) the documents are confidential and need not be produced unless Opposer agrees to modify the standard Protective Order of the Board. These claims are contrary to the April 23 Order, contrary to the Board rules governing Protective Orders, and contrary to the facts.

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<sup>1</sup> Copies of Opposer’s First Set of Interrogatories and First Set of Production Requests are attached as **Exhibits A and B**, respectively.

<sup>2</sup> Board Order suspending proceeding, Dkt. No. 23.

**B. The April 23 Order does not toll the time or suspend Applicant's obligation to produce documents responsive to Opposer's Discovery Requests.**

Although the above-referenced proceeding is currently suspended pending disposition of Applicant's motion for leave to file an amended answer, the April 23 Order specifically states, on page 5, fn. 7:

This suspension order does *not* toll the time for the *parties to respond to any outstanding discovery requests which had been served prior to the April 19, 2021* teleconference with the Board, including Opposer's responses to Applicant's First Set of Requests for Production, First Set of Interrogatories, and First Set of Requests for Admissions.

(Emphasis added).

The April 23 Order requires both parties to respond to discovery served prior to the April 19, 2021 teleconference date. Opposer's Discovery Requests were served on January 14, 2021, more than three (3) months before the teleconference date. Thus, Applicant is obligated to fully respond to Opposer's Discovery Requests.

Accordingly, the April 23 Order did not suspend Applicant's obligations to fully respond to Opposer's Discovery Requests. Applicant should therefore be ordered to fully respond to Opposer's Discovery Requests, without any delay caused by the suspension of these proceedings.

**C. A lack of a stipulated Protective Order is not a proper basis for withholding confidential document production since the standard Protective Order is automatically in set in place by the Board.**

Additionally, despite its obligation to fully respond to Opposer's Discovery Requests, Applicant is withholding documents it agreed to produce in response to numerous interrogatories and documents requests on grounds the parties have not agreed to a stipulated Protective Order. Yet, Opposer terminated discussions of a stipulated Protective Order on May 21, 2021 and has

since then responded to Applicant's discovery requests under the standard Protective Order already in place. However, Applicant has not made any effort since May 21, 2021 to move for any revisions of the standard Protective Order.

More specifically, on March 2, 2021, Applicant served its responses to Opposer's Discovery Requests ("Applicant's Written Responses")<sup>3</sup>. In response to *each and every one* of Opposer's Interrogatories Nos. 12, 18, 26, 28, 31, and 32, and Opposer's Production Request Nos. 3, 5, 6, 8, 12-19, 21, 30, 31, 33-35, 37, 39, 41, 44, and 45, ***Applicant indicated it would produce documents responsive to the requests*** (collectively, the "Document Production"). However, on April 22, 2021, Applicant produced only ***non-confidential*** documents that appear to be partially responsive to Opposer's Production Request No. 31 and Interrogatory No. 18.

Applicant has a duty to produce the remainder of its Document Production withheld as being confidential. Pursuant to TBMP 406.04(c) and FRCP 34(b)(2)(B), responses to requests for production of documents must state, with respect to each item or category of documents or things requested to be produced, that inspection and related activities will be permitted as requested. Alternatively, if copies of documents are to be produced in lieu of inspection, the responding party may state that it will produce copies of documents and electronically stored information instead of permitting inspection. *Id.* The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response. *Id.*

In accordance with FRCP Rule 34(B)(2)(b), Opposer's First Set of Request for Production specified that for written responses indicating copies of documents will be produced,

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<sup>3</sup> Copies of Applicant's Written Responses to Opposer's First Set of Interrogatories and First Set of Production Requests are attached as **Exhibits C and D**, respectively.

copies of those documents were to be produced within thirty (30) days of the service of the respective written responses. Applicant's Written Responses were served on March 2, 2021. Full and complete Document Production to supplement Applicant's Written Responses was therefore due on April 1, 2021.

As of July 9, 2021, more than three (3) months after Applicant served its Written Responses, Opposer still has not received all of Applicant's Document Production Applicant agreed to produce in response to Opposer's Interrogatories Nos. 12, 18, 26, 28, 31, and 32 and Production Request Nos. 3, 5, 6, 8, 12-19, 21, 30, 31, 33-35, 37, 39, 41, 44, 45, served on January 14, 2021. Specifically, none of the Document Production considered by Applicant to be confidential has been produced.

Applicant improperly claims that none of the documents withheld under Applicant's claim of confidentiality must be produced until the parties complete negotiations of revisions of the standard Protective Order.

However, those negotiations were effectively terminated by Opposer in an email on May 21, 2021 ("Opposer's First Notice")<sup>4</sup>, in which Opposer notified Applicant it would instead abide by the terms of the standard Protective Order. At the same time, Opposer requested production by Applicant of documents withheld under claims of confidentiality, as well as supplementation of any interrogatory responses being withheld under any claims of confidentiality, by May 26, 2021.

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<sup>4</sup> Copy of Opposer's First Notice sent on May 21, 2021 is attached as **Exhibit E**.

On May 25, 2021, Applicant responded to Opposer's First Notice by an email<sup>5</sup> refusing to comply with Opposer's requests, based on both the suspension instituted by the April 23 Order and lack of agreement to revisions of the standard Protective Order, stating:

Mattel will oppose any motion filed by Traxxas on the grounds that the matter is currently suspended. Also, through no fault of Mattel, the parties have still not agreed to the terms of a stipulated protective order governing the use of confidential information in the proceeding.

However, when Opposer ended its discussion of a stipulated Protective Order on May 21, 2021 (Exhibit E), the burden shifted to Applicant to seek – if necessary – a revised Protective Order by motion to the Board. Since then, Applicant has failed to move the Board for any revisions to the standard Protective Order and has merely refused to produce any confidential documents because the standard Protective Order is – in Applicant's view – inadequate. Applicant's position that it need not produce confidential document unless and until Opposer agrees to a revised Protective Order is a thinly-veiled attempt by Applicant to deflect blame to Opposer and shirk its discovery obligations.

Applicant's reliance on the parties' lack of an agreement to revisions to the standard Protective Order is not proper, because the Board's standard Protective Order is automatically in place to govern the exchange of information unless the parties, by stipulation approved by the Board, agree to an alternative order, *or a motion by a party to use an alternative order is granted by the Board*. TBMP 412.01.

Accordingly, after Opposer's First Notice terminated discussions about revisions to the standard Protective Order on May 21, 2021, it became incumbent on Applicant to unilaterally seek revision of the standard Protective Order by filing a motion with the Board. Therefore, at

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<sup>5</sup> Copy of Applicant's email response sent on May 25, 2021 is attached as **Exhibit F**.

this time, the standard Protective Order of the Board applies and should be employed by Applicant as appropriate to avoid further unnecessary delay fulfilling its discovery obligations.

Applicant has knowingly failed to timely file a motion for an alternative Protective Order and is instead improperly using the alleged inadequacy of the standard Protective Order as an excuse for not complying with its discovery obligations made clear by the April 23 Order. By failing to take timely action to obtain an alternative Protective Order, ***Applicant has waived*** its right to do so and thereby further delay full production of its Document Production and any other discovery obligation, such as serving supplementary interrogatory responses, at this time.

On July 2, 2021, Opposer served supplementary written responses and documents responsive to Applicant's First Set of Request for Production of Documents and Applicant's First Set of Interrogatories, both served by Applicant on February 25, 2021. Opposer also reiterated its objection to Applicant's failure to produce the remaining confidential Document Production and again requested that Applicant produce all documents and supplement all interrogatory responses being withheld under claims of confidentiality, by Friday, July 9, 2021 (Opposer's Second Notice).<sup>6</sup>

#### **D. Conclusion.**

As of the filing of this motion on July 9, 2021, Applicant still has not provided Opposer with the withheld Document Production and any supplementary interrogatory responses, despite being due for over three (3) months.

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<sup>6</sup> Copy of Opposer's Second Notice sent on July 2, 2021 is attached as **Exhibit G**.

Opposer has met its obligations pursuant to TBMP 523.02 to make a good faith effort, by conference or correspondence, to resolve the issue of Applicant's outstanding production to support this motion.

Accordingly, pursuant to FRCP 37(a) and 37 C.F.R. 2.120(e), Opposer respectfully requests that the Board compel Applicant Mattel, Inc. to immediately produce the Document Production withheld under claims of confidentiality and supplement its interrogatory responses (if necessary), by relying on the protections of the standard Protective Order to the extent appropriate.

Dated: July 9, 2021

Respectfully Submitted,

/s/ Gregory W. Carr

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### **CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury that **on July 9, 2021**, a true copy of the foregoing OPPOSER TRAXXAS, L.P.'S (SECOND) MOTION TO COMPEL was served **via email** on **Jill M. Pietrini** at Sheppard Mullin Richter & Hampton LLP, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067, attorney of record for Applicant, sent to the addresses noted below:

[trademarkscc@sheppardmullin.com](mailto:trademarkscc@sheppardmullin.com);

[jpietrini@sheppardmullin.com](mailto:jpietrini@sheppardmullin.com);

[rlhudson@sheppardmullin.com](mailto:rlhudson@sheppardmullin.com);

[PBost@SheppardMullin.com](mailto:PBost@SheppardMullin.com); and

[MDaner@SheppardMullin.com](mailto:MDaner@SheppardMullin.com)

/s/ Gregory W. Carr  
Gregory W. Carr  
Attorney for Opposer

# **EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TRAXXAS, L.P.	§	Opposition No.: 91263510
	§	
Opposer	§	
	§	
v.	§	
	§	
Mattel, Inc.	§	
	§	
Applicant	§	Application No.: 88583445
	§	Mark: MIGHTY MAX

**OPPOSER TRAXXAS, L.P.’S FIRST SET OF  
INTERROGATORIES NOS. 1-38**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer TRAXXAS, L.P. (“Opposer”) hereby requests that Applicant Mattel, Inc. (“Applicant”) fully answer each of the following interrogatories, in writing and under oath, without evasion, within thirty (30) days of service of these interrogatories.

**DEFINITIONS**

1. “OPPOSER” means TRAXXAS, L.P., the Opposer in the above-captioned proceeding.
2. “APPLICANT,” “YOU,” or “YOUR” means Applicant Mattel, Inc., its subsidiaries, divisions, predecessor, and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, or each of the foregoing entities' employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.
3. “OPPOSER’S MARKS” means the marks identified in pages 1-3 of the Notice of Opposition in this proceeding.

4. “CHALLENGED MARK” means the mark that is the subject of U.S. Trademark Application No. 88583445 and this proceeding.

5. “MARK” includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127, both federally registered and those protected by state or common law.

6. The term “IN COMMERCE” means “use in commerce” as defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127.

7. “DATE” means the exact day, month, and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

8. “DOCUMENTS” is synonymous in meaning and equal in scope to its usage in Federal Rules of Civil Procedure 34(a)(1)(A). The term “DOCUMENT” refers to any document now or at any time in APPLICANT’S possession, custody, or control. A PERSON is deemed in control of a document if the PERSON has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

9. “COMMUNICATION” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

10. “CONCERNING” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

11. “DESCRIBE” means set forth fully and unambiguously every fact relevant to the subject of the interrogatory, of which YOU (including your agents and representatives) have knowledge

or information, including, without limitation, IDENTIFY each PERSON, DOCUMENT, COMMUNICATION, and source of information known to YOU that is material to proving such fact.

12. “IDENTIFY” with respect to a PERSON that is not an individual means to state its: full name, legal form, date of organization, state of incorporation or organization or other business or license authority, present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

13. “IDENTIFY” with respect to a DOCUMENT means to give, to the extent known, the

- (a) type of document (letter, memorandum, tape recording, etc.);
- (b) general subject matter;
- (c) date of the document;
- (d) author(s), addressee(s) and recipient(s);
- (e) person(s) who approved the document;
- (f) its date;
- (g) present location; and
- (h) present custodian.

In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

14. “IDENTIFY” with respect to a COMMUNICATION means to give, to the extent known,

- (a) a description of the substance of the communication;
- (b) the form of the communication (e.g., telephone, facsimile, email, etc.);
- (c) the identity of each person that was a party to or present at the time of the communication, as well as the full name, present or last known address, and the current or last known place of employment of each person;
- (d) the identity of the person whom you contend initiated the communication; and
- (e) the time, date, and place of the communication.

15. “IDENTIFY” with respect to source of information means, to the extent known,

- (a) identify the person from whom you obtained the information; and
- (b) identify each communication from such person constituting, summarizing, reflecting, or otherwise referring to or relating to the information.

16. “IDENTIFY” with respect to PERSON, means to give, to the extent known, the

- (a) Name of the person;
- (b) Present business and home address;
- (c) Present business, home, and telephone number;
- (d) Present or last known employer and present or last known position with such employer; and
- (e) Relationship with you (including the dates each such relationship commenced and terminated, and a brief description of the relationship).

17. A reference to a “PERSON” includes an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity and includes all of that person's principals, employees, agents, attorneys, consultants, and other representatives.

18. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the request all responses that might otherwise fall outside the scope of this request.

19. The terms “all,” “any,” and “each” encompass any and all of the matter discussed.

20. The use of singular form includes plural, and *vice versa*.

21. The use of present tense includes past tense, and *vice versa*.

22. The masculine form shall also be construed to include the feminine and *vice versa*.

## **INSTRUCTIONS**

1. Answers to these interrogatories shall be served upon the undersigned attorneys at CARR Law Firm, PLLC within thirty (30) days of service of these interrogatories.

2. Each interrogatory is to be answered fully based on information in APPLICANT'S possession, custody, or control, and in the possession, custody, or control of APPLICANT'S representatives, agents, or attorneys.

3. If you object to any interrogatory or any portion of an interrogatory on the ground that the answer reflects or would reveal the substance of a privileged communication, identify:

- (a) the nature of the privilege claimed;
- (b) the person who made the communication, whether oral or in writing;
- (c) if the communication was oral, all persons present while the communication was made;
- (d) if the communication was written, the author, addressees, and any other recipients;
- (e) the relationship of the author of the communication to each recipient;
- (f) the relationship of the persons present to the person who made the communication;
- (g) the date and place of the communication; and
- (h) the general subject matter of the communication.

### **OR**

If you object to any interrogatory, in whole or in part, on the grounds of privilege, provide all information required by Federal Rule of Civil Procedure 26(b)(5) and TBMP § 405.04(b).

4. If, after a reasonable and thorough investigation using due diligence, you are unable to answer any interrogatory or any part thereof, on the ground of lack of information available to you, please state what has been done to locate such information. In addition, specify what knowledge and belief you do have concerning the unanswered portion of any interrogatory and the facts upon which such knowledge and belief is based.

5. Where an interrogatory does not specifically request a particular fact, but where such fact or facts are necessary to make the answer to the interrogatory either comprehensible, complete, or not misleading, you should include such fact or facts as part of the answer and the interrogatory shall be deemed to specifically request such fact or facts.

6. Unless otherwise stated herein, these interrogatories cover the time period from January 1, 2015 to and including the date APPLICANT signs its responses to these interrogatories.

7. If you respond to an interrogatory by reference to documents pursuant to Federal Rule of Civil Procedure 33(d), identify with specificity, such as, for example, identifying the applicable Bates Numbers assigned to such documents.

8. For the convenience of the Board and the parties, each interrogatory should be quoted in full immediately preceding the response.

9. These interrogatories are continuing in nature. If you receive or otherwise become aware of information responsive to any interrogatory after you have signed the response to that interrogatory, you must promptly supplement your response to provide such information, as required by Federal Rule of Civil Procedure 26(e) and TBMP § 408.03.



## **INTERROGATORIES**

**INTERROGATORY NO. 1:** DESCRIBE in detail the facts and circumstances CONCERNING YOUR conception, creation, selection, and adoption of the CHALLENGED MARK.

**INTERROGATORY NO. 2:** IDENTIFY all PERSONS actually, planned to be, and intended to be responsible for or which participated in, the conception, creation, selection, and adoption of the CHALLENGED MARK.

**INTERROGATORY NO. 3:** IDENTIFY each actual, planned, and intended trademark search, investigation, review and any other inquiry conducted by or for APPLICANT CONCERNING the availability to use or register the CHALLENGED MARK.

**INTERROGATORY NO. 4:** IDENTIFY all goods in the Application to federally register the CHALLENGED MARK that APPLICANT plans and intends to be promoted, advertised, offered for sale, sold, and provided under or in connection with the CHALLENGED MARK in the United States.

**INTERROGATORY NO. 5:** For each good identified in the Application to federally register the CHALLENGED MARK that YOU plan and intend to be promoted, advertised, offered, sold, and provided under or in connection with the CHALLENGED MARK, please DESCRIBE such advertising, promoting, offering for sale, sale and providing activities, including, without limitation, the PERSONS involved, DATE, type, geographic area of distribution, and cost.

**INTERROGATORY NO. 6:** IDENTIFY all domain names and websites displaying the CHALLENGED MARK that are owned, operated, or controlled by APPLICANT, and all PERSONS who have been or are, responsible for or participating in, the creation and development of each website.

**INTERROGATORY NO. 7:** DESCRIBE all market research actually, planned to be, and intended to be conducted by or on behalf of APPLICANT CONCERNING the CHALLENGED MARK or CONCERNING all goods identified in the Application to federally register the CHALLENGED MARK actually marketed under the CHALLENGED MARK, including the results of such research.

**INTERROGATORY NO. 8:** DESCRIBE all channels of trade in the United States through which APPLICANT has planned to use and intended to use to promote, advertise, sell, and offer for sale all “toy vehicles and accessories therefor” goods identified in the Application to federally register the CHALLENGED MARK under or in connection with the CHALLENGED MARK.

**INTERROGATORY NO. 9:** DESCRIBE all planned and intended classes and types of consumers that comprise the current and intended market for all “toy vehicles and accessories therefor” goods identified in the Application to federally register the CHALLENGED MARK and promoted, advertised, offered for sale, sold, and intended to be offered for sale or sold under or in connection with the CHALLENGED MARK.

**INTERROGATORY NO. 10:** IDENTIFY by name and location all trade shows in the United States where the “toy vehicles and accessories therefor” goods in the Application to federally register the CHALLENGED MARK will be and are intended to be advertised, displayed, promoted, offered for sale or sold.

**INTERROGATORY NO. 11:** DESCRIBE the DATE and circumstances of APPLICANT first becoming aware of OPPOSER’S use and Registrations of OPPOSER’S MARKS.

**INTERROGATORY NO. 12:** IDENTIFY all agreements CONCERNING the CHALLENGED MARK by DATE, parties to the agreement, and the subject matter of the agreement. Agreements CONCERNING the CHALLENGED MARK include, without limitation, any formal and informal contractual relationship, whether written, implied-in fact, and oral, between the APPLICANT and any third parties pertaining to the manufacture, marketing, development, sale, distribution, trademark Application, and licensing of “toy vehicles and accessories therefor” bearing the CHALLENGED MARK.

**INTERROGATORY NO. 13:** DESCRIBE in detail any COMMUNICATIONS between APPLICANT and any third-party CONCERNING OPPOSER or OPPOSER’S MARKS, and any actions taken by APPLICANT as a result of such COMMUNICATIONS.

**INTERROGATORY NO. 14:** DESCRIBE each and every instance of which APPLICANT is aware in which any PERSON has been in any way confused, mistaken, or deceived as to the

source, origin, or sponsorship of any goods or services advertised, promoted, sold, offered for sale, and provided under or in connection with the CHALLENGED MARK.

**INTERROGATORY NO. 15:** DESCRIBE in detail all statements, acts, and omissions by or attributable to OPPOSER indicating there is not a likelihood of confusion alleged by OPPOSER.

**INTERROGATORY NO. 16:** DESCRIBE in detail the dissimilarities between the CHALLENGED MARK and each of OPPOSER’S MARKS, if any, indicating there is no likelihood of confusion alleged by OPPOSER.

**INTERROGATORY NO. 17:** DESCRIBE in detail the relatedness or lack thereof between the nature of “toy vehicles and accessories therefor” identified in the Application to federally register the CHALLENGED MARK and the nature of the goods identified in each of the Registrations of OPPOSER’S MARKS, indicating there is no likelihood of confusion alleged by OPPOSER.

**INTERROGATORY NO. 18:** IDENTIFY all MARKS and any Applications to register such MARKS federally or in any State, if any, supporting any contention by APPLICANT there is not a likelihood of confusion alleged by OPPOSER.

**INTERROGATORY NO. 19:** IDENTIFY all goods identified in the Application to federally register the CHALLENGED MARK, if any, supporting any contention by APPLICANT there is not a likelihood of confusion alleged by OPPOSER.

**INTERROGATORY NO. 20:** DESCRIBE in detail all aspects of the intended marketplace applicable to “toy vehicles and accessories therefor” identified in the Application to federally register the CHALLENGED MARK and to the goods identified in the Registrations of each of the OPPOSER’S MARKS, if any, supporting any contention by APPLICANT there is not a likelihood of confusion alleged by OPPOSER.

**INTERROGATORY NO. 21:** DESCRIBE in detail differences between the class of consumers for “toy vehicles and accessories therefor” identified in the Application to federally register the CHALLENGED MARK and for the goods identified in the Registrations of each of the OPPOSER’S MARKS, if any, supporting any contention by APPLICANT there is not a likelihood of confusion alleged by OPPOSER.

**INTERROGATORY NO. 22:** DESCRIBE in detail all claims that YOUR intent to use or Application of the CHALLENGED MARK infringes or otherwise conflicts with rights of a third party.

**INTERROGATORY NO. 23:** DESCRIBE in detail all claims by APPLICANT that the use of or any Application to federally register a MARK by a third party infringes or otherwise conflicts with YOUR rights in the CHALLENGED MARK.

**INTERROGATORY NO. 24:** DESCRIBE in detail all plans YOU have to manufacture, distribute, offer, provide, or sell “toy vehicles and accessories therefor” under or in connection with the CHALLENGED MARK in the United States.

**INTERROGATORY NO. 25:** DESCRIBE in detail all steps YOU have taken towards the offering, providing, and sale of “toy vehicles and accessories therefor” registered under or in connection with the CHALLENGED MARK.

**INTERROGATORY NO. 26:** IDENTIFY all manufacturers, distributors, and wholesalers that YOU have used and intend to use in connection with the production, distribution, and sale of all “toy figures” and “toy vehicles and accessories therefor” under or in connection with the CHALLENGED MARK.

**INTERROGATORY NO. 27:** For each manufacturer, distributor, and wholesaler required to be IDENTIFIED in Interrogatory No. 26, DESCRIBE all agreements and business arrangements between YOU and the manufacturer, distributor, or wholesaler.

**INTERROGATORY NO. 28:** IDENTIFY all manufacturers, distributors, and wholesalers that YOU have used each year since 2010 in connection with the production, distribution, and sale of all “toy figures” and “toy vehicles and accessories therefor” under or in connection with the CHALLENGED MARK.

**INTERROGATORY NO. 29:** For each manufacturer, distributor, and wholesaler required to be IDENTIFIED in Interrogatory No. 28, DESCRIBE all agreements and business arrangements between YOU and the manufacturer, distributor, or wholesaler for each year since 2010 CONCERNING all “toy figures” and “toy vehicles and accessories therefor” under or in connection with the CHALLENGED MARK .

**INTERROGATORY NO. 30:** For each good identified in the Application to federally register the CHALLENGED MARK that you have caused to be manufactured under or in connection with the CHALLENGED MARK, state your total current inventory (in units) for each such product.

**INTERROGATORY NO. 31:** State APPLICANT'S total annual sales of each good identified in the Application to federally register the CHALLENGED MARK and sold under or in connection with the CHALLENGED MARK, for each year since 2010.

**INTERROGATORY NO. 32:** State APPLICANT'S total annual advertising expenditures in connection with the CHALLENGED MARK for each year since 2010.

**INTERROGATORY NO. 33:** IDENTIFY all goods and services actually sold, offered, or licensed by APPLICANT each year since 2010 under or in connection with the CHALLENGED MARK.

**INTERROGATORY NO. 34:** IDENTIFY all goods and services planned and intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

**INTERROGATORY NO. 35:** IDENTIFY all PERSONS that furnished information for the responses to these interrogatories, designating the number of each interrogatory for which each such PERSON furnished information.

**INTERROGATORY NO. 36:** As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-45, if any DOCUMENT was, but no longer is, in YOUR possession, subject to YOUR control, or in existence, include a statement (a) IDENTIFYING the DOCUMENT; (b) Describing where the DOCUMENT is now; (c) IDENTIFYING the PERSON who has control of the DOCUMENT; (d) Describing how the DOCUMENT became lost or destroyed or was transferred; and (e) IDENTIFYING each of those PERSONS responsible for or having knowledge of the loss, destruction, or transfer of this DOCUMENT from YOUR possession, custody, or control.

**INTERROGATORY NO. 37:** As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-45, if YOUR response is that the DOCUMENTS are not within YOUR possession or custody, DESCRIBE in detail the unsuccessful efforts YOU made to locate each such DOCUMENT. If YOUR response is that the DOCUMENTS are not under YOUR control, IDENTIFY the PERSON who has the control and the location of the DOCUMENT.



**INTERROGATORY NO. 38:** As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-45, if any DOCUMENT was, but no longer is, in YOUR possession, subject to YOUR control, or in existence, provide the governing document retention policy DESCRIBING why the DOCUMENT was but no longer is in YOUR possession, subject to YOUR control, or in existence.

Dated: January 14, 2021

Respectfully Submitted,

/s/ Gregory W. Carr

Gregory W. Carr  
Attorney for Opposer  
Carr Law Firm PLLC  
6170 Research Road  
Suite 111  
Frisco, Texas 75033  
Telephone: (214) 760-3000  
Email: [gcarr@carrlp.com](mailto:gcarr@carrlp.com)

**ATTORNEY'S FED. R. CIV. P. CERTIFICATION**

The undersigned attorney for Applicant has read the foregoing responses to OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-38, and they are in compliance with Fed. R. Civ. P. 26(g).

DATED:\_\_\_\_\_

Sheppard Mullin Richter & Hampton LLP

Respectfully Submitted,

By \_\_\_\_\_  
Jill M. Pietrini  
1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067  
Mattel, Inc.

**VERIFICATION**

I, \_\_\_\_\_, declare under penalty of perjury under the laws of the United States that I am the \_\_\_\_\_ of Applicant in this matter, and I have reviewed the foregoing responses to OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-38, know the contents thereof, and believe them to be true and correct

DATED:\_\_\_\_\_

\_\_\_\_\_  
[APPLICANT]

### **CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury that **on January 14, 2021** a true copy of the foregoing OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-38 was served **via email** on **Jill M. Pietrini** at Sheppard Mullin Richter & Hampton LLP, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067, attorney of record for Applicant, sent to the addresses noted below:

[trademarkscc@sheppardmullin.com](mailto:trademarkscc@sheppardmullin.com);

[jpietrini@sheppardmullin.com](mailto:jpietrini@sheppardmullin.com);

[rlhudson@sheppardmullin.com](mailto:rlhudson@sheppardmullin.com);

[PBost@SheppardMullin.com](mailto:PBost@SheppardMullin.com); and

[MDaner@SheppardMullin.com](mailto:MDaner@SheppardMullin.com)

/s/ Gregory W. Carr  
Gregory W. Carr  
Attorney for Opposer

# **EXHIBIT B**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

TRAXXAS, L.P.	§	Opposition No.: 91263510
	§	
Opposer	§	
	§	
v.	§	
	§	
Mattel, Inc.	§	
	§	
Applicant	§	Application No.: 88583445
	§	Mark: MIGHTY MAX
	§	

**OPPOSER TRAXXAS, L.P.’S FIRST SET OF  
REQUESTS FOR PRODUCTION NOS. 1-45**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer TRAXXAS, L.P. (“Opposer”) hereby requests Mattel, Inc. (“Applicant”), by its undersigned counsel, respond to the following requests for the production of documents and things by providing written responses thereto and producing for inspection and copying the documents requested herein at the offices of Opposer’s attorneys, CARR Law Firm, PLLC, 6170 Research Rd. Suite 111 Frisco, TX 75033, Attn: Gregory Carr, within thirty (30) days of service of these requests. Pursuant to FRCP Rule 34(B)(2)(b), for written responses to Requests indicating copies of documents will be produced, Opposer requests copies of said documents be produced within thirty (30) days of the service of the respective written responses.

**DEFINITIONS**

1. “OPPOSER” means TRAXXAS, L.P., the OPPOSER in the above-captioned proceeding.
2. “APPLICANT,” “YOU,” or “YOUR” means Applicant Mattel, Inc., its subsidiaries, divisions, predecessor, and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, or each of the foregoing entities' licensees of the

CHALLENGED MARK, employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any PERSON who served in any such capacity at any time during the relevant time period specified herein.

3. “OPPOSER’S MARKS” means the marks identified in pages 1-3 of the Notice of Opposition in this proceeding.

4. “CHALLENGED MARK” means the mark that is the subject of U.S. Trademark Application No. 88583445 in this proceeding.

5. “MARK” includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127, both federally registered and those protected by state or common law.

6. The term “IN COMMERCE” means “use in commerce” as defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127.

7. “DATE” means the exact day, month, and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

8. “DOCUMENT” is synonymous in meaning and equal in scope to its usage in FRCP 34(a)(1)(A). The term “document” refers to any document now or at any time in Applicant's possession, custody, or control. A PERSON is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

9. “COMMUNICATION” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

10. “CONCERNING” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

11. “IDENTIFY” with respect to a PERSON that is not an individual means to state its: full name, legal form, date of organization, state of incorporation or organization or other business or license authority, present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

12. “IDENTIFY” with respect to a DOCUMENT means to give, to the extent known, the

- (a) type of document (letter, memorandum, tape recording, etc.);
- (b) general subject matter;
- (c) date of the document;
- (d) author(s), addressee(s) and recipient(s);
- (e) person(s) who approved the document;
- (f) its date;
- (g) present location; and
- (h) present custodian.

In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

13. “IDENTIFY” with respect to COMMUNICATIONS means to give, to the extent known,

- (a) a description of the substance of the communication;
- (b) the form of the communication (e.g., telephone, facsimile, email, etc.);
- (c) the identity of each person that was a party to or present at the time of the communication, as well as the full name, present or last known address, and the current or last known place of employment of each person;
- (d) the identity of the person whom you contend initiated the communication; and
- (e) the time, date, and place of the communication.

14. “IDENTIFY” with respect to source of information means to give, to the extent known,

- (a) identify the person from whom you obtained the information; and
- (b) identify each communication from such person constituting, summarizing, reflecting, or otherwise referring to or relating to the information.

15. “IDENTIFY” with respect to PERSON, means to give, to the extent known, the

- (a) Name of the person;
- (b) Present business and home address;
- (c) Present business, home, and telephone number;
- (d) Present or last known employer and present or last known position with such employer; and
- (e) Relationship with you (including the dates each such relationship commenced and terminated, and a brief description of the relationship).

16. A reference to a “PERSON” includes an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity and includes all of that person's principals, employees, agents, attorneys, consultants, and other representatives.

17. “APPLICATION” means U.S. Trademark Application No. 88583445.

18. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the request all responses that might otherwise fall outside the scope of this request.

19. The terms “all,” “any,” and “each” encompass any and all of the matter discussed.

20. The use of singular form includes plural, and *vice versa*.

21. The use of present tense includes past tense, and *vice versa*.

22. The masculine form shall also be construed to include the feminine and *vice versa*.



## **INSTRUCTIONS**

1. All DOCUMENTS are to be produced as they are kept in the usual course of business with any identifying labels, file markings, or similar identifying features, or shall be organized and labeled to correspond to the categories requested herein. If there are no DOCUMENTS in response to a particular request or if YOU withhold any responsive DOCUMENTS or categories of DOCUMENTS based on any objections, YOU shall state so in writing.

2. Electronically stored information (ESI) must be produced in its original native format with its accompanying metadata. For example:

(a) Documents created using Microsoft Word must be produced as .doc files; and

(b) E-mails must be produced in a form that readily supports import into standard email client programs (e.g., .msg or .pst files).

### **OR**

Electronically stored information (ESI) must be produced in PDF format with corresponding load files containing the document's text and all available metadata.

3. These requests call for the production of all responsive DOCUMENTS in YOUR possession, custody, or control, and in the possession, custody, or control of YOUR employees, predecessors, successors, parents, subsidiaries, divisions, affiliates, partners, joint venturers, brokers, accountants, financial advisors, representatives, and agents or other persons acting on your behalf, without regard to the physical location of such DOCUMENTS.

4. In responding to these requests, include DOCUMENTS obtained on YOUR behalf by YOUR counsel, employees, agents, or any other persons acting on YOUR behalf. If YOUR

response is that the DOCUMENTS are not within YOUR possession or custody, describe in detail the unsuccessful efforts YOU made to locate each such DOCUMENT. If YOUR response is that DOCUMENTS are not under YOUR control, identify who has the control and the location of the DOCUMENTS.

5. If any DOCUMENT was, but no longer is, in YOUR possession, subject to YOUR control, or in existence, include a statement:

- (a) Identifying the document;
- (b) Describing where the document is now;
- (c) Identifying who has control of the document;
- (d) Describing how the document became lost or destroyed or was transferred; and
- (e) Identifying each of those persons responsible for or having knowledge of the loss, destruction, or transfer of this document from your possession, custody, or control.

6. Each request contemplates production of all DOCUMENTS in their entirety. If a portion of a DOCUMENT is responsive to one or more requests, the DOCUMENT shall be produced in its entirety.

7. If any DOCUMENT is withheld in whole or in part for any reason including, without limitation, a claim of privilege or other protection from disclosure such as the work product doctrine, business confidentiality, or trade secret protection, set forth separately with respect to each such DOCUMENT:

- (a) The ground of privilege or protection claimed;
- (b) Each and every basis under which the document is withheld;
- (c) The type of document;
- (d) Its general subject matter;
- (e) The document's date; and
- (f) Identifying each person having knowledge of the reason(s) for withholding all or any portion of the document.

8. To the extent YOU assert that a DOCUMENT contains information that should be protected from disclosure (based on the attorney-client privilege, work product doctrine, or

another protection) and non-privileged information, the non-privileged portions of the DOCUMENT must be produced. For each such DOCUMENT, indicate the portion of the DOCUMENT withheld by stamping the words “MATERIAL REDACTED” on the DOCUMENT in an appropriate location that does not obscure the remaining text.

9. Unless otherwise stated herein, all DOCUMENTS requested are for the period commencing January 1, 2015 to and including the date APPLICANT signs its responses to these requests for production.

10. Unless otherwise stated herein, all requests for production apply to activities in or in connection with the United States.

11. For the convenience of the Board and the parties, each request for production should be quoted in full immediately preceding the response.

12. These requests are continuing, and YOUR response to these requests must be promptly supplemented when appropriate or necessary in accordance with Federal Rule of Civil Procedure 26(e) and TBMP 408.03.

## **REQUESTS FOR PRODUCTION**

**REQUEST FOR PRODUCTION NO. 1:** All DOCUMENTS relied upon by APPLICANT in drafting the Answer.

**REQUEST FOR PRODUCTION NO. 2:** All DOCUMENTS CONCERNING APPLICANT'S selection, conception, creation, and adoption of the CHALLENGED MARK for use on or in connection with the goods identified in the APPLICATION to federally register the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 3:** DOCUMENTS sufficient to IDENTIFY all PERSONS actually, planned to, and intended to be responsible for, participated in, or have information or were consulted CONCERNING the selection, conception, creation, or adoption of the CHALLENGED MARK for use on or in connection with the goods identified in the APPLICATION to federally register the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 4:** DOCUMENTS CONCERNING any actual, planned, and intended trademark search, investigation, review, and inquiry, conducted by or on behalf of APPLICANT and all related materials CONCERNING the availability for use or APPLICATION to federally register the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 5:** All DOCUMENTS CONCERNING United States Trademark Application No. 88583445, including, but not limited to, copies of all DOCUMENTS submitted to or received from the United States Patent and Trademark Office and any other PERSON in connection with the APPLICATION.

**REQUEST FOR PRODUCTION NO. 6:** DOCUMENTS sufficient to IDENTIFY all “toy vehicles and accessories therefor” actually, planned to be, and intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 7:** DOCUMENTS sufficient to IDENTIFY all PERSONS responsible for inventing, creating, manufacturing, designing, or revising all “toy vehicles and accessories therefor” identified in the APPLICATION to federally register the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 8:** All DOCUMENTS CONCERNING the actual, planned, and intended manufacturing of “toy vehicles and accessories therefor,” including, without limitation, orders and samples of all “toy vehicles and accessories therefor” identified in the APPLICATION to federally register the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 9:** DOCUMENTS sufficient to show all steps taken towards the offering, providing, and sale of “toy vehicles and accessories therefor” under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 10:** All DOCUMENTS CONCERNING any assessment, evaluation, and consideration by APPLICANT of how to categorize, describe, or define the goods identified in the APPLICATION to federally register the CHALLENGED.

**REQUEST FOR PRODUCTION NO. 11:** DOCUMENTS sufficient to show any plans for development and expansion of “toy vehicles and accessories therefor” that are offered, sold, provided, or licensed in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 12:** ALL DOCUMENTS CONCERNING the actual, planned, and intended sale of “toy vehicles and accessories therefor,” including, without limitation, manufacturing orders and samples of “toy vehicles and accessories therefor” sold or offered or intended to be sold or offered under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 13:** ALL DOCUMENTS CONCERNING all uses and intended uses of the CHALLENGED MARK on “toy vehicles and accessories therefor.”

**REQUEST FOR PRODUCTION NO. 14:** DOCUMENTS CONCERNING all channels of trade through which APPLICANT actually, planned, and intended to advertise, promote, distribute, sell, offer, or license “toy vehicles and accessories therefor” identified in the APPLICATION to federally register the CHALLENGED MARK under and in connection with the CHALLENGED MARK, including, but not limited to, DOCUMENTS that IDENTIFY the distributors, retail, and other business outlets that actually, plan, and intend to sell or offer for sell APPLICANT’S goods identified in the APPLICATION to federally register the CHALLENGED MARK under and in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 15:** DOCUMENTS CONCERNING purchasers, target purchasers, and potential purchasers of all “toy vehicles and accessories therefor” actually, planned, and intended to be sold, offered, distributed, and licensed by APPLICANT under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 16:** DOCUMENTS CONCERNING each visual, oral, and other manner in which APPLICANT actually, planned to, and intended to present or authorize the presentation of the CHALLENGED MARK, including, but not limited to, all pronunciations of and typestyles, fonts, typefaces, designs, shapes, graphics, and colors used for or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 17:** Representative samples of each actual, planned, and intended type of advertisement and promotional material (e.g., print, radio, television, brochures, catalogues, flyers, press releases, website pages, website banners, in-store displays, point-of-sale promotional items, etc.) that display the CHALLENGED MARK, including, but not limited to, DOCUMENTS CONCERNING every manner of presentation of the CHALLENGED MARK in each type of advertisement or promotional material.

**REQUEST FOR PRODUCTION NO. 18:** Representative samples of all tags, labels, signs, and packaging that have, were planned to, and were intended to display the CHALLENGED MARK, including DOCUMENTS CONCERNING every manner of presentation of the CHALLENGED MARK in such materials.

**REQUEST FOR PRODUCTION No. 19:** Representative samples for inspection of each and every type of “toy vehicles and accessories therefor” that YOU have actually, planned to, or intended to be sold, offered, or licensed under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION No. 20:** DOCUMENTS sufficient to identify any designers of graphic, package, product, and other subject matter contacted and engaged by APPLICANT with respect to the preparation of anything bearing, displaying, incorporating, and otherwise using the CHALLENGED MARK, including, without limitation, all DOCUMENTS CONCERNING COMMUNICATIONS between APPLICANT and each such designer.



**REQUEST FOR PRODUCTION NO. 21:** All newspaper, magazine, newsletter, trade journal, website, and other media coverage, in any form or medium (print, electronic, and other), CONCERNING the CHALLENGED MARK, whether or not authored by any official member of the press.

**REQUEST FOR PRODUCTION NO. 22:** DOCUMENTS CONCERNING any PERSONS actually, planned and intended to be considered, contracted, and engaged by APPLICANT with respect to the preparation of any DOCUMENTS and things bearing or otherwise using the CHALLENGED MARK, including, without limitation, all DOCUMENTS CONCERNING COMMUNICATIONS between the APPLICANT and each such PERSON.

**REQUEST FOR PRODUCTION NO. 23:** All DOCUMENTS CONCERNING APPLICANT'S knowledge and awareness of OPPOSER or OPPOSER'S MARK, including, but not limited to, all DOCUMENTS CONCERNING COMMUNICATIONS about and with OPPOSER and about OPPOSER'S use of any of OPPOSER'S MARKS.

**REQUEST FOR PRODUCTION NO. 24:** All studies, surveys, investigations, reviews, research, development, analyses, and opinions CONCERNING the CHALLENGED MARK, including, but not limited to, any such DOCUMENTS comparing the CHALLENGED MARK to any of OPPOSER'S MARKS and CONCERNING any actual confusion or likelihood of confusion between the CHALLENGED MARK (or any MARK that incorporates, in whole or in part, the CHALLENGED MARK or is similar thereto) and any of OPPOSER'S MARKS.

**REQUEST FOR PRODUCTION NO. 25:** All DOCUMENTS CONCERNING any opinion, letter, analysis, and other COMMUNICATION about whether APPLICANT has the freedom, right, and ability to use or register the CHALLENGED MARK as a trademark, service mark, domain name, or other designation of origin, including, without limitation, the opinion document and DOCUMENTS sufficient to show the identity of the individual or entity that requested the opinion, when the opinion was requested, and who prepared the opinion.

**REQUEST FOR PRODUCTION NO. 26:** DOCUMENTS CONCERNING any complaint, petition, demand, objection, administrative proceeding, and civil action made by or against APPLICANT in which any trademark, trade dress, dilution, unfair competition, copyright, or domain name claims were asserted.

**REQUEST FOR PRODUCTION NO. 27:** All DOCUMENTS CONCERNING any observations, perceptions, impressions, and inquiries of any PERSON CONCERNING whether the goods identified in the APPLICATION to federally register the CHALLENGED MARK actually, planned to be, and intended to be sold, offered, provided, or licensed by or on behalf of APPLICANT under or in connection with the CHALLENGED MARK, are produced, sponsored, endorsed by, or in any manner associated or affiliated with, OPPOSER or any goods or services offered under or in connection with any of OPPOSER'S MARKS.

**REQUEST FOR PRODUCTION NO. 28:** All DOCUMENTS CONCERNING any instances of actual and possible confusion, mistake, deception, or association of any kind between OPPOSER, any of OPPOSER'S MARKS, and OPPOSER'S goods or services on the one hand, and any of APPLICANT, the CHALLENGED MARK, and APPLICANT'S goods on the other hand.

**REQUEST FOR PRODUCTION NO. 29:** All DOCUMENTS CONCERNING any COMMUNICATIONS in which any PERSON inquired about, commented on, or mentioned any of OPPOSER, OPPOSER'S MARK, and OPPOSER'S goods or services in any way.

**REQUEST FOR PRODUCTION NO. 30:** All agreements between or among APPLICANT and any other PERSON CONCERNING the CHALLENGED MARK, including, without limitation, the actual, planned, and intended manufacture, advertisement, promotion, marketing, distribution, sale, offer, and licensing of any goods identified in the APPLICATION to federally register the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 31:** DOCUMENTS CONCERNING all third-party MARKS that APPLICANT contends are relevant to this opposition proceeding.

**REQUEST FOR PRODUCTION NO. 32:** DOCUMENTS CONCERNING all claims that YOUR use or APPLICATION to federally register the CHALLENGED MARK infringes or otherwise conflicts with rights of a third party.

**REQUEST FOR PRODUCTION NO. 33:** DOCUMENTS CONCERNING all claims by APPLICANT that the use or Application of a MARK by a third party infringes or otherwise conflicts with YOUR rights in the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 34:** DOCUMENTS sufficient to show all plans YOU have to manufacture, distribute, offer, provide, and sell “toy vehicles and accessories therefor” identified in the APPLICATION to federally register the CHALLENGED MARK under or in connection with the CHALLENGED MARK in the United States.

**REQUEST FOR PRODUCTION NO. 35:** DOCUMENTS sufficient to identify each price at which APPLICANT intends to market, sell, offer, distribute, and license, all “toy vehicles and accessories” therefor offered in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 36:** For each good that you have caused to be manufactured under or in connection with the CHALLENGED MARK, DOCUMENTS sufficient to show your total current inventory of the good.

**REQUEST FOR PRODUCTION NO. 37:** DOCUMENTS sufficient to show all manufacturers, distributors, and wholesalers that you have used and those that you intend to use in connection with the production, distribution, and sale of all “toy figures” and “toy vehicles and accessories therefor” goods under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 38:** For each manufacturer, distributor, and wholesaler referred to in response to Document Request No. 37, DOCUMENTS sufficient to identify all business arrangements with the manufacturer, distributor, or wholesaler CONCERNING all “toy figures” and “toy vehicles and accessories therefor” goods under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 39:** DOCUMENTS sufficient to show all manufacturers, distributors, and wholesalers that you have used each year since 2010 in connection with the production, distribution, and sale of all “toy figures” and “toy vehicles and accessories therefor” goods under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 40:** For each manufacturer, distributor, and wholesaler referred to Document Request No. 39, DOCUMENTS sufficient to identify all business arrangements with the manufacturer, distributor, or wholesaler for each year since 2010 CONCERNING all “toy figures” and “toy vehicles and accessories therefor” goods under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 41:** DOCUMENTS sufficient to identify all goods and services actually sold, offered, or licensed by APPLICANT each year since 2010 under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 42:** DOCUMENTS SUFFICIENT to identify all goods and services planned and intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

**REQUEST FOR PRODUCTION NO. 43:** To the extent not produced in response to the foregoing requests, all DOCUMENTS that support or refute APPLICANT'S defense of this proceeding, including, but not limited to, all DOCUMENTS that support or refute any factual allegations or legal theories or conclusions APPLICANT has presented, relied on or intends to present or rely on in connection with such defense.

**REQUEST FOR PRODUCTION NO. 44:** All DOCUMENTS referred to, used in the preparation of, and used to obtain information for the responses to any of OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-38, as well as all DOCUMENTS identified in responses to OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-38.

**REQUEST FOR PRODUCTION NO. 45:** DOCUMENTS describing the document retention policy including retention plans, guidelines, rules, standards, protocols, and procedures of the APPLICANT in effect since the earliest date of the range of time stated in this request.

Dated: January 14, 2021

Respectfully Submitted,

/s/ Gregory W. Carr

Gregory W. Carr  
Attorney for Opposer  
Carr Law Firm PLLC  
6170 Research Road  
Suite 111  
Frisco, Texas 75033  
Telephone: (214) 760-3000  
Email: [gcarr@carrlp.com](mailto:gcarr@carrlp.com)

### **CERTIFICATE OF SERVICE**

I hereby declare under penalty of perjury that **on January 14, 2021** a true copy of the foregoing OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-45 was served **via email** on **Jill M. Pietrini** at Sheppard Mullin Richter & Hampton LLP, 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067, attorney of record for Applicant, sent to the addresses noted below:

[trademarkscc@sheppardmullin.com](mailto:trademarkscc@sheppardmullin.com);

[jpietrini@sheppardmullin.com](mailto:jpietrini@sheppardmullin.com);

[rlhudson@sheppardmullin.com](mailto:rlhudson@sheppardmullin.com);

[PBost@SheppardMullin.com](mailto:PBost@SheppardMullin.com); and

[MDaner@SheppardMullin.com](mailto:MDaner@SheppardMullin.com)

/s/ Gregory W. Carr  
Gregory W. Carr  
Attorney for Opposer



# **EXHIBIT C**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<i>In re Matter of Application Serial No. 88/583,445 for the trademark: <b>MIGHTY MAX in Class 28</b></i>  Traxxas, L.P.,  Opposer,  v.  Mattel, Inc.,  Applicant.	Opposition No. 91-263510  <b>APPLICANT MATTEL, INC.’S OBJECTIONS AND RESPONSES TO OPPOSER TRAXXAS, L.P.’S FIRST SET OF INTERROGATORIES</b>
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Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R.  
§ 2.120, Applicant Mattel, Inc. (“Applicant” or “Mattel”), for itself and no other party, hereby  
objects and responds to Opposer Traxxas, L.P.’s (“Opposer”) Interrogatories, Set One  
(“Interrogatories”), as set forth below.

**PRELIMINARY STATEMENT**

These responses are made solely for the purposes of this action. Any admission or  
document supplied in response to any particular interrogatory are or will be supplied by Mattel  
subject to all objections as to competence, relevance, materiality, propriety, admissibility, and  
any and all other objections on any grounds that would require the exclusion of the admission or  
document or portion thereof if such admission or document were offered into evidence, all of  
which objections and grounds are hereby expressly reserved and may be interposed during  
testimony in this case.

No incidental or implied admissions are intended by the responses herein. The fact that  
Mattel has supplied or agreed to supply, or hereafter supplies or agrees to supply, information or

a document in response to any particular interrogatory should not be taken as an admission that Mattel accepts or admits the existence of any fact set forth or assumed by such interrogatory or said document or that such document constitutes admissible evidence. The fact that Mattel has supplied or agreed to supply, or hereafter supplies or agrees to supply, information or a document in response to any interrogatory is not intended, and shall not be construed as a waiver by Mattel of any part of any objection to any such interrogatory or any part of any general objection. The fact that Mattel makes a response and/or objection to any interrogatory is not intended, and shall not be construed, as an admission that information or documents responsive to that interrogatory exist or are in Mattel's possession, custody, or control.

Mattel reserves the right to make changes to these responses if it appears that omissions or errors have been made herein, or that future or more accurate information is available. Mattel has not completed its own investigation and discovery. Therefore, the following responses state Mattel's knowledge, information, and belief as of the date of such responses, and Mattel expressly reserves the right to rely upon and/or introduce into evidence at trial such additional documents as Mattel may discover.

### **GENERAL OBJECTIONS**

The following General Objections apply to each and every request and shall have the same force and effect as if fully set forth in the response to each.

1. Mattel objects to each Interrogatory insofar as it is unintelligible, vague, overly broad, oppressive, harassing or vexatious; imposes burden or expense that outweighs its likely benefit; seeks information equally available to Opposer and Mattel; seeks information not relevant to the claim or defense of any party and/or disproportionate to the needs of the case; seeks Mattel's confidential information; seeks information not within Mattel's possession, custody, or control; does not describe with reasonable particularity the information and/or

documents requested; contains erroneous and/or contentious factual allegations or legal assertions; and/or seeks information related to facts, events or activities, or documents dated, prepared or received after the commencement of this action.

2. Mattel objects to the Interrogatories and the accompanying definitions and instructions to the extent they seek to impose upon Mattel burdens and obligations not contemplated by the FRCP, the CFR, the TBMP, or other applicable law.

3. Mattel objects to the Interrogatories, including the definitions and instructions set forth therein, to the extent they seek disclosure of information and/or documents that come within the scope of the attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity, and/or protection against disclosure. Such information and/or documents will not knowingly be disclosed. Any inadvertent production of information and/or documents protected from disclosure by the attorney-client privilege, the work product doctrine or any other applicable privilege, immunity, and/or protection is not intended to be and shall not be: (a) a waiver of such privilege, immunity, and/or protection in whole or in part; or (b) a waiver of the right to object to any use of such document or of the information contained therein in this or any other proceeding.

4. Mattel objects to each Interrogatory to the extent that it: (a) seeks disclosure of information and documents that would violate the privacy rights of individuals; or (b) seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents, including financial information and documents, of Mattel or third parties.

5. Mattel's responses are made to the best of its current knowledge, information, and belief, and are made according to documents or information currently in Mattel's possession, custody, or control. Mattel does not represent that any information or documents actually exist,

but that it will, as appropriate, make a good faith search and attempt to ascertain whether information or documents responsive to these requests do in fact exist.

6. Mattel is responding to the Interrogatories as it interprets and understands them. If Opposer subsequently asserts an interpretation of an Interrogatory that differs from Mattel's understanding, Mattel reserves the right to supplement its objection and/or response to that request.

7. Mattel objects to the Interrogatories to the extent they call for the production of information or documents that are already in the public domain, already in Opposer's possession, custody, or control, or otherwise available to Opposer through more closely involved third parties, and therefore are substantially less burden for Opposer to obtain than for Mattel to obtain.

8. Mattel makes the objections and responses set forth below without in any manner waiving: (a) the right to object to the use of any response for any purpose in this action or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (b) the right to object to any other requests involving, or relating to, the subject matter of the responses herein; (c) the right to revise, correct, supplement, or clarify any of the responses provided below at any time; (d) the right to assert the attorney-client privilege, work product protections, or any other applicable privilege; and (e) the right to assert any additional or supplemental objections should additional grounds for such objections become apparent. Mattel expressly reserves the right to supplement its responses.

### **RESPONSES TO INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

DESCRIBE in detail the facts and circumstances CONCERNING YOUR conception, creation, selection, and adoption of the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 1:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome. Mattel objects to this interrogatory on the grounds that it is vague and ambiguous. Mattel objects to this request to the extent it seeks information that is protected by the attorney-client privilege and the attorney work product doctrine. Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Mattel did not initially conceive, create, select, or adopt the MIGHTY MAX trademark. The trademark MIGHTY MAX was first used by Bluebird Toys PLC ("Bluebird") in the 1990s for a line of toys. Mattel distributed these toys in the U.S. for Bluebird C. Later, Mattel acquired Bluebird and the rights to the MIGHTY MAX mark.

**INTERROGATORY NO. 2:**

IDENTIFY all PERSONS actually, planned to be, and intended to be responsible for or which participated in, the conception, creation, selection, and adoption of the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 2:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly its request for the identification of "all persons." Mattel objects to this interrogatory on the grounds that it is vague and ambiguous, particularly the phrase "planned to, and intended." Mattel objects to this interrogatory to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: PJ Lewis, Vice President, Global Marketing and Portfolio Leader, Mattel has knowledge regarding Mattel's use of the MIGHTY MAX mark for toys. Mattel does not have information about the conception of the MIGHTY MAX mark for toys.

**INTERROGATORY NO. 3:**

IDENTIFY each actual, planned, and intended trademark search, investigation, review and any other inquiry conducted by or for APPLICANT CONCERNING the availability to use or register the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 3:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome. Mattel objects to this interrogatory on the grounds that it is vague and ambiguous, particularly the phrase "planned, and intended." Mattel objects to this interrogatory to the extent it seeks information that is protected by the attorney-client to the extent the grounds it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: None.

**INTERROGATORY NO. 4:**

IDENTIFY all goods in the Application to federally register the CHALLENGED MARK that APPLICANT plans and intends to be promoted, advertised, offered for sale, sold, and provided under or in connection with the CHALLENGED MARK in the United States.

**RESPONSE TO INTERROGATORY NO. 4:**

Mattel objects to this interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Mattel objects to this interrogatory to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

**INTERROGATORY NO. 5:**

For each good identified in the Application to federally register the CHALLENGED MARK that YOU plan and intend to be promoted, advertised, offered, sold, and provided under or in connection with the CHALLENGED MARK, please DESCRIBE such advertising, promoting, offering for sale, sale and providing activities, including, without limitation, the PERSONS involved, DATE, type, geographic area of distribution, and cost.

**RESPONSE TO INTERROGATORY NO. 5:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome. Mattel objects to this interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Mattel objects to this interrogatory to the extent it seeks information that is protected by the attorney-client privilege and the attorney work product doctrine. Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

**INTERROGATORY NO. 6:**

IDENTIFY all domain names and websites displaying the CHALLENGED MARK that are owned, operated, or controlled by APPLICANT, and all PERSONS who have been or are, responsible for or participating in, the creation and development of each website.



**RESPONSE TO INTERROGATORY NO. 6:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it seeks the identification of “all domain names and websites” and “all persons ...” Mattel objects to this interrogatory on the grounds that it is vague and ambiguous, particularly the phrase “all who have been or are, responsible for or participating in.” Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: <https://corporate.mattel.com/en-us/brand-portfolio/mighty-max>. Mattel may use the MIGHTY MAX mark on other domain names it owns, operates, or controls but has not to date located any such uses.

**INTERROGATORY NO. 7:**

DESCRIBE all market research actually, planned to be, and intended to be conducted by or on behalf of APPLICANT CONCERNING the CHALLENGED MARK or CONCERNING all goods identified in the Application to federally register the CHALLENGED MARK actually marketed under the CHALLENGED MARK, including the results of such research.

**RESPONSE TO INTERROGATORY NO. 7:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it seeks the identification of “all market research ...” Mattel objects to this interrogatory on the grounds that it is vague and ambiguous, particularly the phrase “planned to be, and intended to be” and “actually marketed.” Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their

licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Mattel is not currently aware of any market research it intends to conduct regarding the MIGHTY MAX mark or the goods it intends to offer thereunder.

**INTERROGATORY NO. 8:**

DESCRIBE all channels of trade in the United States through which APPLICANT has planned to use and intended to use to promote, advertise, sell, and offer for sale all "toy vehicles and accessories therefor" goods identified in the Application to federally register the CHALLENGED MARK under or in connection with the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 8:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it seeks the identification of "all channels of trade ..." Mattel objects to this interrogatory on the grounds that it is vague and ambiguous, particularly the phrase "planned to use and intended to use." Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Mattel intends to offer toy vehicles and accessories therefor under the MIGHTY MAX mark online and through brick and mortar stores carrying toys, and to promote such products through Mattel's website, through retailer websites, in retail stores through displays of the products, on Mattel's social media pages, in Mattel branded retail stores, and through other usual channels of trade for these types of products.

**INTERROGATORY NO. 9:**

DESCRIBE all planned and intended classes and types of consumers that comprise the current and intended market for all “toy vehicles and accessories therefor” goods identified in the Application to federally register the CHALLENGED MARK and promoted, advertised, offered for sale, sold, and intended to be offered for sale or sold under or in connection with the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 9:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it seeks the identification of “all planned an intended classes ...” Mattel objects to this interrogatory on the grounds that it is vague and ambiguous as a whole. Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Mattel intends to market toy vehicles and accessories therefor under the MIGHTY MAX mark to children, parents of children, and toy enthusiasts and collectors.

**INTERROGATORY NO. 10:**

IDENTIFY by name and location all trade shows in the United States where the “toy vehicles and accessories therefor” goods in the Application to federally register the CHALLENGED MARK will be and are intended to be advertised, displayed, promoted, offered for sale or sold.

**RESPONSE TO INTERROGATORY NO. 10:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it seeks the identification of “all trade shows ...” Mattel objects to this interrogatory on the grounds that it is vague and ambiguous, particularly the phrase “will be and are intended to be.” Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Toy Fair in New York. Mattel intends to market the MIGHTY MAX mark or the goods it intends to offer thereunder at other trade shows in the U.S., both virtually and physically.

**INTERROGATORY NO. 11:**

DESCRIBE the DATE and circumstances of APPLICANT first becoming aware of OPPOSER’S use and Registrations of OPPOSER’S MARKS.

**RESPONSE TO INTERROGATORY NO. 11:**

Mattel objects to this interrogatory on the grounds that it is vague and ambiguous, particularly the term “circumstances.” Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this interrogatory to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Mattel first became aware of Opposer’s registrations of its marks at

issue on or around July 2019, which is when Opposer became aware that Opposer, like Mattel, had filed a notice of opposition to Creative Impact Inc.'s application to register MAX.

**INTERROGATORY NO. 12:**

IDENTIFY all agreements CONCERNING the CHALLENGED MARK by DATE, parties to the agreement, and the subject matter of the agreement. Agreements CONCERNING the CHALLENGED MARK include, without limitation, any formal and informal contractual relationship, whether written, implied-in fact, and oral, between the APPLICANT and any third parties pertaining to the manufacture, marketing, development, sale, distribution, trademark Application, and licensing of "toy vehicles and accessories therefor" bearing the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 12:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly its request for "all agreements." Mattel objects to this interrogatory on the grounds that it is vague and ambiguous as a whole. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this interrogatory to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case. Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their agents, representatives, or licensees. Mattel objects to this interrogatory because it calls for a compilation, abstract, or summary of Mattel's business records, and the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Opposer as for Mattel.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Mattel will produce license, coexistence, settlement, or assignment agreements relating to its mark at issue since January 1,

2015, if any, subject to a suitable protective order agreed to by the parties and entered by the Board.

**INTERROGATORY NO. 13:**

DESCRIBE in detail any COMMUNICATIONS between APPLICANT and any third-party CONCERNING OPPOSER or OPPOSER’S MARKS, and any actions taken by APPLICANT as a result of such COMMUNICATIONS.

**RESPONSE TO INTERROGATORY NO. 13:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “any communications.” Mattel objects to this interrogatory to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Mattel is not aware of any such communications.

**INTERROGATORY NO. 14:**

DESCRIBE each and every instance of which APPLICANT is aware in which any PERSON has been in any way confused, mistaken, or deceived as to the source, origin, or sponsorship of any goods or services advertised, promoted, sold, offered for sale, and provided under or in connection with the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 14:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “each and every instance ...” Mattel objects to this interrogatory on the grounds that it is vague and ambiguous as a whole. Mattel objects to this interrogatory to the extent it is not relevant to the parties’ claims and defenses and not

proportionate to the needs of the case. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Mattel is not aware of any such instances of confusion, mistake, or deception related to Opposer's marks.

**INTERROGATORY NO. 15:**

DESCRIBE in detail all statements, acts, and omissions by or attributable to OPPOSER indicating there is not a likelihood of confusion alleged by OPPOSER.

**RESPONSE TO INTERROGATORY NO. 15:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly as to its request for "all statements, acts, and omissions ..." Mattel objects to this interrogatory on the grounds that it is vague and ambiguous as a whole. Mattel objects to this interrogatory to the extent it seeks information outside of its personal knowledge. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Opposer has not previously objected to Mattel's use or registration of MIGHTY MAX before the instant proceedings. Opposer has not identified any instances of actual confusion caused by Mattel's use of MIGHTY MAX. Opposer's website includes statements describing its products and their prices.

**INTERROGATORY NO. 16:**

DESCRIBE in detail the dissimilarities between the CHALLENGED MARK and each of OPPOSER'S MARKS, if any, indicating there is no likelihood of confusion alleged by OPPOSER

**RESPONSE TO INTERROGATORY NO. 16:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it is indefinite in nature. Mattel objects to this interrogatory on the grounds that it is vague and ambiguous as a whole. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this interrogatory because it effectively seeks Mattel's pre-trial disclosure information and is therefore premature.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Opposer's marks and MIGHTY MAX are dissimilar visually aurally, and in connotation and meaning.

**INTERROGATORY NO. 17:**

DESCRIBE in detail the relatedness or lack thereof between the nature of "toy vehicles and accessories therefor" identified in the Application to federally register the CHALLENGED MARK and the nature of the goods identified in each of the Registrations of OPPOSER'S MARKS, indicating there is no likelihood of confusion alleged by OPPOSER.

**RESPONSE TO INTERROGATORY NO. 17:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome. Mattel objects to this interrogatory on the grounds that it is vague and ambiguous as a whole. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: "Toy vehicles and accessories therefor" are not related to "radio-controlled model vehicles and parts therefor," and neither encompasses the other.



**INTERROGATORY NO. 18:**

IDENTIFY all MARKS and any Applications to register such MARKS federally or in any State, if any, supporting any contention by APPLICANT there is not a likelihood of confusion alleged by OPPOSER.

**RESPONSE TO INTERROGATORY NO. 18:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it seeks “all Marks and any Applications.” Mattel objects to this interrogatory on the grounds that it is vague and ambiguous. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this interrogatory because it calls for a compilation, abstract, or summary of Mattel’s business records, and the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Opposer as for Mattel.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Mattel will produce documents reflecting Mattel and third-party registrations and uses weakening Opposer’s alleged rights in its marks.

**INTERROGATORY NO. 19:**

IDENTIFY all goods identified in the Application to federally register the CHALLENGED MARK, if any, supporting any contention by APPLICANT there is not a likelihood of confusion alleged by OPPOSER.

**RESPONSE TO INTERROGATORY NO. 19:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it requests “all goods.” Mattel objects to this interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Mattel objects to this interrogatory to

the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

**INTERROGATORY NO. 20:**

DESCRIBE in detail all aspects of the intended marketplace applicable to “toy vehicles and accessories therefor” identified in the Application to federally register the CHALLENGED MARK and to the goods identified in the Registrations of each of the OPPOSER’S MARKS, if any, supporting any contention by APPLICANT there is not a likelihood of confusion alleged by OPPOSER.

**RESPONSE TO INTERROGATORY NO. 20:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it requests “all aspects.” Mattel objects to this interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

**INTERROGATORY NO. 21:**

DESCRIBE in detail differences between the class of consumers for “toy vehicles and accessories therefor” identified in the Application to federally register the CHALLENGED MARK and for the goods identified in the Registrations of each of the OPPOSER’S MARKS, if any, supporting any contention by APPLICANT there is not a likelihood of confusion alleged by OPPOSER.

**RESPONSE TO INTERROGATORY NO. 21:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome. Mattel objects to this interrogatory on the grounds that it is vague and ambiguous

as a whole. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: The class of purchasers for “toy vehicles and accessories therefor” are children, parents of children, toy enthusiasts, and toy collectors interested in purchasing inexpensive children’s toys. The class of purchasers for “radio-controlled model vehicles and parts therefor” are adult radio-controlled model vehicle enthusiasts interested in purchasing expensive radio-controlled model vehicles requiring assembly and upkeep and a certain mental facility to operate.

**INTERROGATORY NO. 22:**

DESCRIBE in detail all claims that YOUR intent to use or Application of the CHALLENGED MARK infringes or otherwise conflicts with rights of a third party.

**RESPONSE TO INTERROGATORY NO. 22:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it requests “all claims.” Mattel objects to this interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this interrogatory on the grounds that it is not relevant to the parties’ claims and defenses and not proportional to the needs of the case.

**INTERROGATORY NO. 23:**

DESCRIBE in detail all claims by APPLICANT that the use of or any Application to federally register a MARK by a third party infringes or otherwise conflicts with YOUR rights in the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 23:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it requests “all claims.” Mattel objects to this interrogatory on the grounds that it is vague, ambiguous, and unintelligible. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this interrogatory on the grounds that it is not relevant to the parties’ claims and defenses and not proportional to the needs of the case.

**INTERROGATORY NO. 24:**

DESCRIBE in detail all plans YOU have to manufacture, distribute, offer, provide, or sell “toy vehicles and accessories therefor” under or in connection with the CHALLENGED MARK in the United States.

**RESPONSE TO INTERROGATORY NO. 24:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it seeks “all plans.” Mattel objects to this interrogatory on the grounds that it is vague and ambiguous. Mattel objects to this interrogatory on the grounds it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory on the grounds that it is not relevant to the parties’ claims and defenses and not proportional to the needs of the case.

**INTERROGATORY NO. 25:**

DESCRIBE in detail all steps YOU have taken towards the offering, providing, and sale of “toy vehicles and accessories therefor” registered under or in connection with the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 25:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it seeks “all steps.” Mattel objects to this interrogatory on the grounds that it is vague and ambiguous. Mattel objects to this interrogatory on the grounds it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory on the grounds that it is not relevant to the parties’ claims and defenses and not proportional to the needs of the case.

**INTERROGATORY NO. 26:**

IDENTIFY all manufacturers, distributors, and wholesalers that YOU have used and intend to use in connection with the production, distribution, and sale of all “toy figures” and “toy vehicles and accessories therefor” under or in connection with the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 26:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it requests “all manufacturers, distributors, and wholesaler.” Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties’ claims and defenses and not proportional to the needs of the case. Mattel objects to this interrogatory because it calls for a compilation, abstract, or summary of Mattel’s business records, and the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Opposer as for Mattel.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Mattel will produce documents sufficient to identify the types of distributors it intends to use, if any.

**INTERROGATORY NO. 27:**

For each manufacturer, distributor, and wholesaler required to be IDENTIFIED in Interrogatory No. 26, DESCRIBE all agreements and business arrangements between YOU and the manufacturer, distributor, or wholesaler.

**RESPONSE TO INTERROGATORY NO. 27:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it requests “all manufacturers, distributors, and wholesaler.” Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory on the grounds it is not relevant to the parties’ claims and defenses and not proportional to the needs of the case. Mattel objects to this interrogatory because it calls for a compilation, abstract, or summary of Mattel’s business records, and the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Opposer as for Mattel.

**INTERROGATORY NO. 28:**

IDENTIFY all manufacturers, distributors, and wholesalers that YOU have used each year since 2010 in connection with the production, distribution, and sale of all “toy figures” and “toy vehicles and accessories therefor” under or in connection with the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 28:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it requests “all manufacturers, distributors, and wholesaler.” Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties’ claims and defenses and not proportional to the needs of the case. Mattel objects to this interrogatory because it calls for a compilation, abstract, or

summary of Mattel's business records, and the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Opposer as for Mattel.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Mattel will produce documents sufficient to identify the types of distributors it has used, if any.

**INTERROGATORY NO. 29:**

For each manufacturer, distributor, and wholesaler required to be IDENTIFIED in Interrogatory No. 28, DESCRIBE all agreements and business arrangements between YOU and the manufacturer, distributor, or wholesaler for each year since 2010 CONCERNING all "toy figures" and "toy vehicles and accessories therefor" under or in connection with the CHALLENGED MARK .

**RESPONSE TO INTERROGATORY NO. 29:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it requests "all manufacturers, distributors, and wholesaler." Mattel objects to this interrogatory to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory on the grounds it is not relevant to the parties' claims and defenses and not proportional to the needs of the case. Mattel objects to this interrogatory because it calls for a compilation, abstract, or summary of Mattel's business records, and the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Opposer as for Mattel.

**INTERROGATORY NO. 30:**

For each good identified in the Application to federally register the CHALLENGED MARK that you have caused to be manufactured under or in connection with the CHALLENGED MARK, state your total current inventory (in units) for each such product.

**RESPONSE TO INTERROGATORY NO. 30:**

Mattel objects to this interrogatory on the grounds it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory on the grounds it is not relevant to the parties' claims and defenses and not proportional to the needs of the case. Mattel objects to this interrogatory because it calls for a compilation, abstract, or summary of Mattel's business records, and the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Opposer as for Mattel.

**INTERROGATORY NO. 31:**

State APPLICANT'S total annual sales of each good identified in the Application to federally register the CHALLENGED MARK and sold under or in connection with the CHALLENGED MARK, for each year since 2010.

**RESPONSE TO INTERROGATORY NO. 31:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly as to time. Mattel objects to this interrogatory on the grounds it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory because it calls for a compilation, abstract, or summary of Mattel's business records, and the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Opposer as for Mattel.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Mattel will produce documents sufficient to identify its annual sales of goods offered under the MIGHTY MAX mark from 2010 to the present subject to a suitable protective order agreed to by the parties and entered by the Board.



**INTERROGATORY NO. 32:**

State APPLICANT'S total annual advertising expenditures in connection with the CHALLENGED MARK for each year since 2010

**RESPONSE TO INTERROGATORY NO. 32:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly as to time. Mattel objects to this interrogatory on the grounds it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory because it calls for a compilation, abstract, or summary of Mattel's business records, and the burden of deriving or ascertaining the answer to this interrogatory is substantially the same for Opposer as for Mattel.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: Pursuant to Fed.R.Civ.P. 33(d), Mattel will produce documents sufficient to identify its annual advertising expenditures related to goods offered under the MIGHTY MAX mark from 2010 to the present subject to a suitable protective order agreed to by the parties and entered by the Board.

**INTERROGATORY NO. 33:**

IDENTIFY all goods and services actually sold, offered, or licensed by APPLICANT each year since 2010 under or in connection with the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 33:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly as to time.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: toys and playthings, namely, toy figures; posters; and post cards.

**INTERROGATORY NO. 34:**

IDENTIFY all goods and services planned and intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

**RESPONSE TO INTERROGATORY NO. 34:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it seeks “all goods and services.” Mattel objects to this interrogatory on the grounds it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this interrogatory to the extent it is not relevant to the parties’ claims and defenses and not proportional to the needs of the case.

Subject to the foregoing objections and to the extent it understands the interrogatory, Mattel responds as follows: toys, games and playthings, namely, toy figures and accessories therefor, toy action figures and accessories therefor, toy action figure playsets and accessories therefor, toy vehicles and accessories therefor; production and distribution of television shows and movies; entertainment services, namely, providing non-downloadable animated movies, on-going television programs and a non-downloadable webisode series, all featuring content in the field of toys, games and children's entertainment provided via a global computer network and via streaming services; and providing online computer games and providing a website featuring non-downloadable photos, non-downloadable videos, and information in the field of toys, games and children's entertainment.

**INTERROGATORY NO. 35:**

IDENTIFY all PERSONS that furnished information for the responses to these interrogatories, designating the number of each interrogatory for which each such PERSON furnished information.

**RESPONSE TO INTERROGATORY NO. 35:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it requests “all persons.” Mattel objects to this interrogatory on the grounds that is vague and ambiguous. Mattel objects to this interrogatory on the grounds that it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

**INTERROGATORY NO. 36:**

As to each of OPPOSER TRAXXAS, L.P.’S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-45, if any DOCUMENT was, but no longer is, in YOUR possession, subject to YOUR control, or in existence, include a statement (a) IDENTIFYING the DOCUMENT; (b) Describing where the DOCUMENT is now; (c) IDENTIFYING the PERSON who has control of the DOCUMENT; (d) Describing how the DOCUMENT became lost or destroyed or was transferred; and (e) IDENTIFYING each of those PERSONS responsible for or having knowledge of the loss, destruction, or transfer of this DOCUMENT from YOUR possession, custody, or control.

**RESPONSE TO INTERROGATORY NO. 36:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it imposes upon Mattel burdens and obligations not contemplated by FRCP 34. Mattel objects to this interrogatory on the grounds that is vague and ambiguous, and causes the number of interrogatories allowed under the TBMP to exceed 75. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this interrogatory on the grounds that it seeks information that is not relevant to the parties’ claims and defenses and not proportional to the needs of the case.

**INTERROGATORY NO. 37:**

As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-45, if YOUR response is that the DOCUMENTS are not within YOUR possession or custody, DESCRIBE in detail the unsuccessful efforts YOU made to locate each such DOCUMENT. If YOUR response is that the DOCUMENTS are not under YOUR control, IDENTIFY the PERSON who has the control and the location of the DOCUMENT.

**RESPONSE TO INTERROGATORY NO. 37:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it imposes upon Mattel burdens and obligations not contemplated by FRCP 34. Mattel objects to this interrogatory on the grounds that is vague and ambiguous, and causes the number of interrogatories allowed under the TBMP to exceed 75. Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this interrogatory on the grounds that it seeks information that is not relevant to the parties' claims and defenses and not proportional to the needs of the case.

**INTERROGATORY NO. 38:**

As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-45, if any DOCUMENT was, but no longer is, in YOUR possession, subject to YOUR control, or in existence, provide the governing document retention policy DESCRIBING why the DOCUMENT was but no longer is in YOUR possession, subject to YOUR control, or in existence.

**RESPONSE TO INTERROGATORY NO. 38:**

Mattel objects to this interrogatory on the grounds that it is overbroad and unduly burdensome, particularly because it imposes upon Mattel burdens and obligations not

contemplated by FRCP 34. Mattel objects to this interrogatory on the grounds that is vague and ambiguous, and causes the number of interrogatories allowed under the TBMP to exceed 75.

Mattel objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this interrogatory on the grounds that it seeks information that is not relevant to the parties' claims and defenses and not proportional to the needs of the case.

Respectfully submitted,

Dated: March 2, 2021

/s/Paul A. Bost  
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*Attorneys for Applicant  
Mattel Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that **APPLICANT MATTEL, INC.'S OBJECTIONS AND RESPONSES TO OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES** is being transmitted via email to gcarr@carrip.com and trademarks@carrip.com on this 2<sup>nd</sup> day of March, 2021.

/Paul A. Bost/  
Paul A. Bost

SMRH:4850-4584-3159.1

# **EXHIBIT D**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<i>In re Matter of Application Serial No. 88/583,445 for the trademark: <b>MIGHTY MAX in Class 28</b></i>  Traxxas, L.P.,  Opposer,  v.  Mattel, Inc.,  Applicant.	Opposition No. 91-263510  <b>APPLICANT MATTEL, INC.’S OBJECTIONS AND RESPONSES TO OPPOSER TRAXXAS, L.P.’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS</b>
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Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R.  
§ 2.120, Applicant Mattel, Inc. (“Applicant” or “Mattel”), for itself and no other party, hereby  
objects and responds to Opposer Traxxas, L.P.’s (“Opposer”) Request for Production of  
Documents, Set One (“Requests”), as set forth below.

**PRELIMINARY STATEMENT**

These responses are made solely for the purposes of this action. Any document supplied  
in response to any particular request is or will be supplied by Mattel subject to all objections as  
to competence, relevance, materiality, propriety, admissibility, and any and all other objections  
on any grounds that would require the exclusion of the document or portion thereof if such  
document were offered into evidence, all of which objections and grounds are hereby expressly  
reserved and may be interposed during testimony in this case.

No incidental or implied admissions are intended by the responses herein. The fact that  
Mattel has supplied or agreed to supply, or hereafter supplies or agrees to supply, a document in  
response to any particular request should not be taken as an admission that Mattel accepts or

admits the existence of any fact set forth or assumed by such request or said document or that such document constitutes admissible evidence. The fact that Mattel has supplied or agreed to supply, or hereafter supplies or agrees to supply, a document in response to any request is not intended, and shall not be construed as a waiver by Mattel of any part of any objection to any such request, any part of any below “General Objections.” The fact that Mattel makes a response and/or objection to any request is not intended, and shall not be construed as an admission that documents responsive to that request exist or are in Mattel’s possession, custody, or control.

Mattel reserves the right to make changes to these responses if it appears that omissions or errors have been made herein, or that future or more accurate information is available. Mattel has not completed its own investigation and discovery. Therefore, the following responses state Mattel’s knowledge, information, and belief as of the date of such responses, and Mattel expressly reserves the right to rely upon and/or introduce into evidence at trial such additional documents as Mattel may discover.

### **GENERAL OBJECTIONS**

The following General Objections apply to each and every request and shall have the same force and effect as if fully set forth in the response to each.

1. Mattel objects to each request insofar as it is unintelligible, vague, overly broad, oppressive, harassing or vexatious; imposes burden or expense that outweighs its likely benefit; seeks information equally available to Opposer and Mattel; seeks information not relevant to the claim or defense of any party and/or disproportionate to the needs of the case; seeks Mattel’s confidential information; seeks information not within Mattel’s possession, custody, or control; does not describe with reasonable particularity the information and/or documents requested; contains erroneous and/or contentious factual allegations or legal assertions; and/or seeks



information related to facts, events or activities, or documents dated, prepared or received after the commencement of this action.

2. Mattel objects to the requests and their accompanying definitions and instructions to the extent they seek to impose upon Mattel burdens and obligations not contemplated by the FRCP, the CFR, the TBMP, or other applicable law.

3. Mattel objects to the requests, including the definitions and instructions set forth therein, to the extent they seek disclosure of information and/or documents that come within the scope of the attorney-client privilege, the work product doctrine, or any other applicable privilege, immunity, and/or protection against disclosure. Such information and/or documents will not knowingly be disclosed. Any inadvertent production of information and/or documents protected from disclosure by the attorney-client privilege, the work product doctrine or any other applicable privilege, immunity, and/or protection is not intended to be and shall not be: (a) a waiver of such privilege, immunity, and/or protection in whole or in part; or (b) a waiver of the right to object to any use of such document or of the information contained therein in this or any other proceeding.

4. Mattel objects to each request to the extent that it: (a) seeks disclosure of information and documents that would violate the privacy rights of individuals; or (b) seeks disclosure of confidential business or commercial information and documents, trade secrets, and/or proprietary information and documents, including financial information and documents, of Mattel or third parties. Mattel will only produce documents reflecting such information pursuant to a protective order entered in this action.

5. Mattel's responses are made to the best of its current knowledge, information, and belief, and are made according to documents or information currently in Mattel's possession, custody, or control. Mattel does not represent that any information or documents actually exist,

but that it will, as appropriate, make a good faith search and attempt to ascertain whether information or documents responsive to these requests do in fact exist.

6. Mattel is responding to the requests as it interprets and understands them. If Opposer subsequently asserts an interpretation of a request that differs from Mattel's understanding, Mattel reserves the right to supplement its objection and/or response to that request.

7. Mattel objects to the requests to the extent they call for the production of information or documents that are already in the public domain, already in Opposer's possession, custody, or control, or otherwise available to Opposer through more closely involved third parties, and therefore are substantially less burden for Opposer to obtain than for Mattel to obtain.

8. Mattel makes the objections and responses set forth below without in any manner waiving: (a) the right to object to the use of any response for any purpose in this action or any other actions on grounds of privilege, relevancy, materiality, or any other appropriate basis; (b) the right to object to any other requests involving, or relating to, the subject matter of the responses herein; (c) the right to revise, correct, supplement, or clarify any of the responses provided below at any time; (d) the right to assert the attorney-client privilege, work product protections, or any other applicable privilege; and (e) the right to assert any additional or supplemental objections should additional grounds for such objections become apparent. Mattel expressly reserves the right to supplement its responses.

### **RESPONSES TO REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

All DOCUMENTS relied upon by APPLICANT in drafting the Answer.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “all documents.” Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request on the grounds that it seeks information protected by the attorney-client privilege and the attorney work product doctrine.

**REQUEST FOR PRODUCTION NO. 2:**

ALL DOCUMENTS CONCERNING APPLICANT’S selection, conception, creation, and adoption of the CHALLENGED MARK for use on or in connection with the goods identified in the APPLICATION to federally register the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to time and its request for “all documents.” Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request to the extent it seeks information that is protected by the attorney-client privilege and the attorney work product doctrine. Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: No such documents are known to exist in Mattel’s possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 3:**

DOCUMENTS sufficient to IDENTIFY all PERSONS actually, planned to, and intended to be responsible for, participated in, or have information or were consulted CONCERNING the selection, conception, creation, or adoption of the CHALLENGED MARK for use on or in connection with the goods identified in the APPLICATION to federally register the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to time and its request for documents identifying “all persons.” Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “planned to, and intended.” Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce documents in its possession, custody, or control sufficient to identify the persons responsible for filing the application. No other responsive documents are known to exist in Mattel’s possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 4:**

DOCUMENTS CONCERNING any actual, planned, and intended trademark search, investigation, review, and inquiry, conducted by or on behalf of APPLICANT and all related materials CONCERNING the availability for use or APPLICATION to federally register the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome. Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the

phrase “planned, and intended.” Mattel objects to this request to the extent it seeks information that is protected by the attorney-client privilege and the attorney work product doctrine. Mattel objects to this request on the grounds it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel is not aware of any non-privileged responsive documents in its possession, custody, or control relating to its application at issue.

**REQUEST FOR PRODUCTION NO. 5:**

ALL DOCUMENTS CONCERNING United States Trademark Application No. 88583445, including, but not limited to, copies of all DOCUMENTS submitted to or received from the United States Patent and Trademark Office and any other PERSON in connection with the APPLICATION.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “all documents.” Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request to the extent it seeks information that is protected by the attorney-client privilege and the attorney work product doctrine. Mattel objects to this request on the grounds it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it seeks the production of documents equally available to Opposer.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce all reasonably responsive non-privileged documents in its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 6:**

DOCUMENTS sufficient to IDENTIFY all “toy vehicles and accessories therefor” actually, planned to be, and intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “planned to be, and intended to be.” Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case, and is overbroad given the nature of Mattel’s business.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce reasonably responsive non-privileged documents, if any, in its possession, custody, or control, subject to the parties’ agreement to and the Court’s entry of a suitable protective order.

**REQUEST FOR PRODUCTION NO. 7:**

DOCUMENTS sufficient to IDENTIFY all PERSONS responsible for inventing, creating, manufacturing, designing, or revising all “toy vehicles and accessories therefor” identified in the APPLICATION to federally register the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to time and its request for documents identifying “all persons.” Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the term “revising.” Mattel objects to this request to the extent it seeks confidential information of Mattel or third

parties or their licensees, agents, or representatives. Mattel objects to this request on the grounds that it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case, and overbroad given the nature of Mattel's business.

**REQUEST FOR PRODUCTION NO. 8:**

ALL DOCUMENTS CONCERNING the actual, planned, and intended manufacturing of "toy vehicles and accessories therefor," including, without limitation, orders and samples of all "toy vehicles and accessories therefor" identified in the APPLICATION to federally register the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for "all documents." Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase "planned, and intended." Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case, and overbroad given the nature of Mattel's business.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce photographs of any toy vehicles and accessories therefor, if any, subject to, as necessary, the parties' agreement to and the Court's entry of a suitable protective order.

**REQUEST FOR PRODUCTION NO. 9:**

DOCUMENTS sufficient to show all steps taken towards the offering, providing, and sale of "toy vehicles and accessories therefor" under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request on the grounds that it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case, and overbroad given the nature of Mattel's business.

**REQUEST FOR PRODUCTION NO. 10:**

ALL DOCUMENTS CONCERNING any assessment, evaluation, and consideration by APPLICANT of how to categorize, describe, or define the goods identified in the APPLICATION to federally register the CHALLENGED [MARK].

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for "all documents." Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case, and overbroad given the nature of Mattel's business. Mattel objects to this request on the grounds that it seeks information that is protected by the attorney-client privilege and the attorney work product doctrine.

**REQUEST FOR PRODUCTION NO. 11:**

DOCUMENTS sufficient to show any plans for development and expansion of "toy vehicles and accessories therefor" that are offered, sold, provided, or licensed in connection with the CHALLENGED MARK.



**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “development and expansion.” Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request on the grounds that it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case, and overbroad given the nature of Mattel’s business.

**REQUEST FOR PRODUCTION NO. 12:**

ALL DOCUMENTS CONCERNING the actual, planned, and intended sale of “toy vehicles and accessories therefor,” including, without limitation, manufacturing orders and samples of “toy vehicles and accessories therefor” sold or offered or intended to be sold or offered under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “all documents” and given the nature of Mattel’s business. Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “planned, and intended.” Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it is duplicative of Request No. 8.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce photographs of any toy vehicles and accessories

therefor, if any, subject to, as necessary, the parties' agreement to and the Court's entry of a suitable protective order.

**REQUEST FOR PRODUCTION NO. 13:**

ALL DOCUMENTS CONCERNING all uses and intended uses of the CHALLENGED MARK on "toy vehicles and accessories therefor."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for "all documents" and given the nature of Mattel's business. Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks information that is protected by the attorney-client privilege and the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce documents reflecting representatives uses of its mark, if any, subject to, as necessary, the parties' agreement to and the Court's entry of a suitable protective order.

**REQUEST FOR PRODUCTION NO. 14:**

DOCUMENTS CONCERNING all channels of trade through which APPLICANT actually, planned, and intended to advertise, promote, distribute, sell, offer, or license "toy vehicles and accessories therefor" identified in the APPLICATION to federally register the CHALLENGED MARK under and in connection with the CHALLENGED MARK, including, but not limited to, DOCUMENTS that IDENTIFY the distributors, retail, and other business

outlets that actually, plan, and intend to sell or offer for sell APPLICANT'S goods identified in the APPLICATION to federally register the CHALLENGED MARK under and in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, especially given the nature of Mattel's business. Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrases "planned, and intended" and "plan, and intend." Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case, particularly in light of TBMP § 414(3). Mattel objects to this request to the extent it seeks documents outside the possession, custody, or control of Mattel.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce non-privileged documents sufficient to identify the types of businesses through which it intends to sell goods under its mark.

**REQUEST FOR PRODUCTION NO. 15:**

DOCUMENTS CONCERNING purchasers, target purchasers, and potential purchasers of all "toy vehicles and accessories therefor" actually, planned, and intended to be sold, offered, distributed, and licensed by APPLICANT under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, especially given the nature of Mattel's business. Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrases "planned, and intended" and "plan, and

intend.” Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce non-privileged documents sufficient to identify the purchasers it expects to purchase goods offered under its mark at issue.

**REQUEST FOR PRODUCTION NO. 16:**

DOCUMENTS CONCERNING each visual, oral, and other manner in which APPLICANT actually, planned to, and intended to present or authorize the presentation of the CHALLENGED MARK, including, but not limited to, all pronunciations of and typestyles, fonts, typefaces, designs, shapes, graphics, and colors used for or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, especially given the nature of Mattel’s business. Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “planned to, and intended to” and terms “present” and “presentation.” Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce reasonably responsive non-privileged documents, if any, in its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 17:**

Representative samples of each actual, planned, and intended type of advertisement and promotional material (e.g., print, radio, television, brochures, catalogues, flyers, press releases, website pages, website banners, in-store displays, point-of-sale promotional items, etc.) that display the CHALLENGED MARK, including, but not limited to, DOCUMENTS CONCERNING every manner of presentation of the CHALLENGED MARK in each type of advertisement or promotional material.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome particularly the request for “documents concerning every manner of presentation ....” Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “planned, and intended.” Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce reasonably responsive non-privileged documents, if any, in its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 18:**

Representative samples of all tags, labels, signs, and packaging that have, were planned to, and were intended to display the CHALLENGED MARK, including DOCUMENTS CONCERNING every manner of presentation of the CHALLENGED MARK in such materials.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome particularly the request for “documents concerning every manner of presentation ....” Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “planned to, and intended.” Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce reasonably responsive non-privileged documents, if any, in its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 19:**

Representative samples for inspection of each and every type of “toy vehicles and accessories therefor” that YOU have actually, planned to, or intended to be sold, offered, or licensed under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “each and every type” and given the nature of Mattel’s business. Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “planned to, and intended.” Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it is duplicative of Request Nos. 8 and 12.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce photographs of any toy vehicles and accessories therefor, if any, subject to, as necessary, the parties' agreement to and the Court's entry of a suitable protective order.

**REQUEST FOR PRODUCTION NO. 20:**

DOCUMENTS sufficient to identify any designers of graphic, package, product, and other subject matter contacted and engaged by APPLICANT with respect to the preparation of anything bearing, displaying, incorporating, and otherwise using the CHALLENGED MARK, including, without limitation, all DOCUMENTS CONCERNING COMMUNICATIONS between APPLICANT and each such designer.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for documents identifying "any designers" and "all documents concerning communications between Applicant and each such designer." Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrases "planned, and intended" and "contacted and engaged." Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their licensees, agents, or representatives. Mattel objects to this request on the grounds it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

**REQUEST FOR PRODUCTION NO. 21:**

All newspaper, magazine, newsletter, trade journal, website, and other media coverage, in any form or medium (print, electronic, and other), CONCERNING the CHALLENGED MARK, whether or not authored by any official member of the press.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “all ... media coverage.” Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “official member of the press.” Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks documents equally available to Opposer.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce reasonably responsive non-privileged documents, if any, in its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 22:**

DOCUMENTS CONCERNING any PERSONS actually, planned and intended to be considered, contracted, and engaged by APPLICANT with respect to the preparation of any DOCUMENTS and things bearing or otherwise using the CHALLENGED MARK, including, without limitation, all DOCUMENTS CONCERNING COMMUNICATIONS between the APPLICANT and each such PERSON.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for documents relating to “any persons” and “all documents concerning communications ...” Mattel objects to this request on the grounds that it is vague, ambiguous, and unintelligible.

**REQUEST FOR PRODUCTION NO. 23:**

All DOCUMENTS CONCERNING APPLICANT’S knowledge and awareness of OPPOSER or OPPOSER’S MARK, including, but not limited to, all DOCUMENTS



CONCERNING COMMUNICATIONS about and with OPPOSER and about OPPOSER’S use of any of OPPOSER’S MARKS.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “all documents.” Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel is not in possession, custody, or control of any responsive, non-privileged documents other than pleadings and documents exchanged in this case.

**REQUEST FOR PRODUCTION NO. 24:**

All studies, surveys, investigations, reviews, research, development, analyses, and opinions CONCERNING the CHALLENGED MARK, including, but not limited to, any such DOCUMENTS comparing the CHALLENGED MARK to any of OPPOSER’S MARKS and CONCERNING any actual confusion or likelihood of confusion between the CHALLENGED MARK (or any MARK that incorporates, in whole or in part, the CHALLENGED MARK or is similar thereto) and any of OPPOSER’S MARKS.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “all studies, surveys, investigations, reviews, research, development, analyses, and opinions.” Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request to the extent it seeks information

protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request to the extent it seeks premature expert discovery.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce responsive documents, if any, at the expert disclosure deadline.

**REQUEST FOR PRODUCTION NO. 25:**

ALL DOCUMENTS CONCERNING any opinion letter, analysis, and other COMMUNICATION about whether APPLICANT has the freedom, right, and ability to use or register the CHALLENGED MARK as a trademark, service mark, domain name, or other designation of origin, including, without limitation, the opinion document and DOCUMENTS sufficient to show the identity of the individual or entity that requested the opinion, when the opinion was requested, and who prepared the opinion.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly as to its request for “all documents.” Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request on the grounds that it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

**REQUEST FOR PRODUCTION NO. 26:**

DOCUMENTS CONCERNING any complaint, petition, demand, objection, administrative proceeding, and civil action made by or against APPLICANT in which any trademark, trade dress, dilution, unfair competition, copyright, or domain name claims were asserted.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome in almost every respect. Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request on the grounds it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks documents equally available to Opposer.

**REQUEST FOR PRODUCTION NO. 27:**

ALL DOCUMENTS CONCERNING any observations, perceptions, impressions, and inquiries of any PERSON CONCERNING whether the goods identified in the APPLICATION to federally register the CHALLENGED MARK actually, planned to be, and intended to be sold, offered, provided, or licensed by or on behalf of APPLICANT under or in connection with the CHALLENGED MARK, are produced, sponsored, endorsed by, or in any manner associated or affiliated with, OPPOSER or any goods or services offered under or in connection with any of OPPOSER'S MARKS.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly its request for "all documents." Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase "planned to be, and intended to be." Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel is not in possession, custody, or control of any responsive, non-privileged documents.

**REQUEST FOR PRODUCTION NO. 28:**

ALL DOCUMENTS CONCERNING any instances of actual and possible confusion, mistake, deception, or association of any kind between OPPOSER, any of OPPOSER'S MARKS, and OPPOSER'S goods or services on the one hand, and any of APPLICANT, the CHALLENGED MARK, and APPLICANT'S goods on the other hand.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly its request for "all documents." Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase "possible confusion." Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: No such documents are known to exist.

**REQUEST FOR PRODUCTION NO. 29:**

ALL DOCUMENTS CONCERNING any COMMUNICATIONS in which any PERSON inquired about, commented on, or mentioned any of OPPOSER, OPPOSER'S MARK, and OPPOSER'S goods or services in any way.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly its request for "all documents." Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request to the extent it seeks

information protected by the attorney-client privilege or the attorney work product doctrine.

Mattel objects to this request on the grounds it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel is not in possession, custody, or control of any responsive, non-privileged documents.

**REQUEST FOR PRODUCTION NO. 30:**

All agreements between or among APPLICANT and any other PERSON CONCERNING the CHALLENGED MARK, including, without limitation, the actual, planned, and intended manufacture, advertisement, promotion, marketing, distribution, sale, offer, and licensing of any goods identified in the APPLICATION to federally register the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly to the extent it requests "all agreements." Mattel objects to this request on the grounds that it is vague and ambiguous as a whole. Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks confidential information of Mattel or third parties or their agents, representatives, or licensees.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce license, coexistence, settlement, or assignment

agreements relating to its mark at issue since January 1, 2015, if any, subject to a suitable protective order agreed to by the parties and entered by the Board.

**REQUEST FOR PRODUCTION NO. 31:**

DOCUMENTS CONCERNING all third-party MARKS that APPLICANT contends are relevant to this opposition proceeding.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly to the extent it seeks “all third-party Marks.” Mattel objects to this request on the grounds that it is vague and ambiguous. Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce documents reflecting Mattel and third-party registrations and uses weakening Opposer’s alleged rights in its marks.

**REQUEST FOR PRODUCTION NO. 32:**

DOCUMENTS CONCERNING all claims that YOUR use or APPLICATION to federally register the CHALLENGED MARK infringes or otherwise conflicts with rights of a third party.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly the request for documents concerning “all claims.” Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “conflicts with rights.” Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request on the grounds

that it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks documents equally available to Opposer.

**REQUEST FOR PRODUCTION NO. 33:**

DOCUMENTS CONCERNING all claims by APPLICANT that the use or Application of a MARK by a third party infringes or otherwise conflicts with YOUR rights in the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly the request for documents concerning "all claims." Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase "conflicts with your rights." Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks documents equally available to Opposer.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce cease and desist letters it has sent and documents sufficient to identify any lawsuits or other proceedings relating to its MIGHTY MAX mark it has commenced since January 1, 2015, if any.

**REQUEST FOR PRODUCTION NO. 34:**

DOCUMENTS sufficient to show all plans YOU have to manufacture, distribute, offer, provide, and sell "toy vehicles and accessories therefor" identified in the APPLICATION to federally register the CHALLENGED MARK under or in connection with the CHALLENGED MARK in the United States.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly the request for documents concerning “all plans” and given the nature of Mattel’s business. Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “all plans.” Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks confidential information of Mattel and third parties or their agents, representatives, or licensees. Mattel objects to this request to the extent it is duplicative of other requests.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce reasonably responsive non-privileged documents in its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 35:**

DOCUMENTS sufficient to identify each price at which APPLICANT intends to market, sell, offer, distribute, and license, all “toy vehicles and accessories” therefor offered in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “price at which Applicant intends to market ... distribute, and license.” Mattel objects to this request to the extent it seeks confidential information of Mattel and third parties or their agents, representatives, or licensees.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce non-privileged documents sufficient to reflect the



intended wholesale and suggested retail price for toy vehicles and accessories therefor offered under the mark, if any, subject to the parties' agreement to and the Board's entry of a suitable protective order.

**REQUEST FOR PRODUCTION NO. 36:**

For each good that you have caused to be manufactured under or in connection with the CHALLENGED MARK, DOCUMENTS sufficient to show your total current inventory of the good.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase "for each good." Mattel objects to this request to the extent it seeks confidential information of Mattel and third parties or their agents, representatives, or licensees. Mattel objects to this request on the grounds it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

**REQUEST FOR PRODUCTION NO. 37:**

DOCUMENTS sufficient to show all manufacturers, distributors, and wholesalers that you have used and those that you intend to use in connection with the production, distribution, and sale of all "toy figures" and "toy vehicles and accessories therefor" goods under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, especially given the nature of Mattel's business. Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the

extent it seeks confidential information of Mattel and third parties or their agents, representatives, or licensees. Mattel objects to this request to the extent it is duplicative of other requests.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce non-privileged documents sufficient to reflect the types of wholesalers and distributors through which it distributes or intends to distribute the goods in question under its mark at issue, if any.

**REQUEST FOR PRODUCTION NO. 38:**

For each manufacturer, distributor, and wholesaler referred to in response to Document Request No. 37, DOCUMENTS sufficient to identify all business arrangements with the manufacturer, distributor, or wholesaler CONCERNING all “toy figures” and “toy vehicles and accessories therefor” goods under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, especially given the nature of Mattel’s business. Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase “business arrangements.” Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request on the grounds it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks confidential information of Mattel and third parties or their agents, representatives, or licensees. Mattel objects to this request to the extent it is duplicative of other requests.

**REQUEST FOR PRODUCTION NO. 39:**

DOCUMENTS sufficient to show all manufacturers, distributors, and wholesalers that you have used each year since 2010 in connection with the production, distribution, and sale of all “toy figures” and “toy vehicles and accessories therefor” goods under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, especially given the nature of Mattel’s business. Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request to the extent it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks confidential information of Mattel and third parties or their agents, representatives, or licensees. Mattel objects to this request to the extent it is duplicative of other requests, including Request No. 37.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce non-privileged documents sufficient to reflect the types of wholesalers and distributors through which it has distributed the goods in question under its mark at issue, if any.

**REQUEST FOR PRODUCTION NO. 40:**

For each manufacturer, distributor, and wholesaler referred to Document Request No. 39, DOCUMENTS sufficient to identify all business arrangements with the manufacturer, distributor, or wholesaler for each year since 2010 CONCERNING all “toy figures” and “toy vehicles and accessories therefor” goods under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, especially given the nature of Mattel's business. Mattel objects to this request on the grounds that it is vague and ambiguous, particularly the phrase "business arrangements." Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request on the grounds it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case. Mattel objects to this request to the extent it seeks confidential information of Mattel and third parties or their agents, representatives, or licensees. Mattel objects to this request to the extent it is duplicative of other requests, including Request No. 38.

**REQUEST FOR PRODUCTION NO. 41:**

DOCUMENTS sufficient to identify all goods and services actually sold, offered, or licensed by APPLICANT each year since 2010 under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce reasonably responsive non-privileged documents in its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 42:**

DOCUMENTS SUFFICIENT to identify all goods and services planned and intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome. Mattel object to this request on the grounds that it is vague and ambiguous, particularly the phrase “planned and intended to “ Mattel objects to this request on the grounds that it is not relevant to the parties’ claims and defenses and not proportionate to the needs of the case.

**REQUEST FOR PRODUCTION NO. 43:**

To the extent not produced in response to the foregoing requests, all DOCUMENTS that support or refute APPLICANT’S defense of this proceeding, including, but not limited to, all DOCUMENTS that support or refute any factual allegations or legal theories or conclusions APPLICANT has presented, relied on or intends to present or rely on in connection with such defense.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly its request for “all documents.” Mattel object to this request on the grounds that it is vague and ambiguous. Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request to the extent it seeks confidential information of Mattel and third parties or their agents, representatives, or licensees. Mattel objects to this request because it exceeds the scope of allowable discovery under the Federal Rules of Civil Procedure and the TBMP.

**REQUEST FOR PRODUCTION NO. 44:**

All DOCUMENTS referred to, used in the preparation of, and used to obtain information for the responses to any of OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-38, as well as all DOCUMENTS identified in responses to OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-38.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

Mattel objects to this request on the grounds that it is overbroad and unduly burdensome, particularly its request for "all documents." Mattel object to this request on the grounds that it is vague and ambiguous. Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request to the extent it seeks confidential information of Mattel and third parties or their agents, representatives, or licensees.

Subject to the foregoing objections and to the extend it understands the request, Mattel responds as follows: Mattel will produce non-privileged documents expressly referred to in its interrogatory responses in its possession, custody, or control.

**REQUEST FOR PRODUCTION NO. 45:**

DOCUMENTS describing the document retention policy including retention plans, guidelines, rules, standards, protocols, and procedures of the APPLICANT in effect since the earliest date of the range of time stated in this request.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

Mattel objects to this request to the extent it seeks information protected by the attorney-client privilege or the attorney work product doctrine. Mattel objects to this request to the extent it seeks confidential information of Mattel and third parties or their agents, representatives, or

licensees. Mattel objects to this request to the extent it is not relevant to the parties' claims and defenses and not proportionate to the needs of the case.

Subject to the foregoing objections and to the extent it understands the request, Mattel responds as follows: Mattel will produce reasonably responsive non-privileged documents in its possession, custody, or control.

Respectfully submitted,

Dated: March 2, 2021

/s/Paul A. Bost  
Jill M. Pietrini  
Paul A. Bost  
SHEPPARD MULLIN RICHTER & HAMPTON LLP  
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Los Angeles, California 90067-6017  
Telephone: (310) 228-3700  
Facsimile: (310) 228-3701

*Attorneys for Applicant  
Mattel Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that **APPLICANT MATTEL, INC.'S OBJECTIONS AND RESPONSES TO OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** is being transmitted via email to [gcarr@carrip.com](mailto:gcarr@carrip.com) and [trademarks@carrip.com](mailto:trademarks@carrip.com) on this 2<sup>nd</sup> day of March, 2021.

/Paul A. Bost/  
Paul A. Bost

SMRH:4853-0451-4519.1

# **EXHIBIT E**



## David Huang

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**From:** Greg Carr  
**Sent:** Friday, May 21, 2021 6:22 PM  
**To:** Paul Bost; Jill Pietrini; Beth Anderson  
**Cc:** David Huang; trademarks  
**Subject:** RE: CONFIDENTIAL SETTLEMENT COMMUNICATION - U.S. Trademark Application No. 88583445 for MIGHTY MAX

Dear Paul:

The discussion below is not a reason for Mattel to continue to withhold documents under a claim of confidentiality. As you know, the standard protective order published by the TTAB is in effect regardless of whether the parties agree to different terms of a protective order.

The TBMP makes clear claims of confidentiality are not a valid basis for not producing documents and responding fully to discovery.

Please produce all documents and supplement all interrogatory responses being withheld under claims of confidentiality, by Wednesday, May 26, 2021. Traxxas will abide by the terms of the TTAB protective order in its handling of such documents and information.

This is intended to be a meet and confer communication. Please let us know if you have any questions or would like to discuss this further.

Traxxas will seek assistance of the Board to compel production and supplementation, if necessary, after Wednesday, May 26, 2021.

Regards,  
Greg

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**From:** Paul Bost <PBoSt@sheppardmullin.com>  
**Sent:** Friday, April 23, 2021 6:17 PM  
**To:** Greg Carr <gcarr@carrip.com>; Jill Pietrini <JPietrini@sheppardmullin.com>; Beth Anderson <baanderson@sheppardmullin.com>  
**Cc:** David Huang <dhuang@carrip.com>; trademarks <trademarks@carrip.com>  
**Subject:** RE: CONFIDENTIAL SETTLEMENT COMMUNICATION - U.S. Trademark Application No. 88583445 for MIGHTY MAX

Greg:

We've reviewed the protective order. The remaining issues are as follows:

- Paragraph 3: The revised definition of "independent experts or consultants" is too broad. It prohibits anyone who was ever an employee, officer, member, director, partner, vendor, supplier, customer, third-party contractor, or consultant of a party, a party affiliate, or a competitor of a party from viewing confidential information in their role as an expert. That's virtually anyone in the toy industry. Also, the "recent" qualification is necessary so that individuals who are removed from their position that might have formerly prohibited them from viewing confidential information may now do so with no appreciable risk. We don't understand how Mattel's potential laches claim is relevant to this qualification. Accordingly, we suggest revising the term as follows:

**Independent experts or consultants** include individuals retained by a Party for purposes related to prosecution or defense of the proceeding but who are not current or **recent** former employees, officers, members, directors, partners, ~~vendors, suppliers, customers, third-party contractors~~, or consultants of: (a) any Party, (b) affiliates of any Party, (c) the attorneys of any Party or its affiliates, or (d) competitors to any Party. **A person is a recent former employee, officer, member, director, partner, or consultant if he or she held the position at issue within the last three years.**

- **Paragraph 5:** I don't understand the added language. If the person held a "prohibited position," he/she can't be an independent expert or consultant. Is the intention to disclose if someone might have had held a prohibited position? I'm sure we can figure out appropriate language, if any, if we can understand your intent.

I'm happy to discuss the above with you at your convenience,

Paul

**Paul Bost**

+1 310-228-2249 | direct

[PBost@sheppardmullin.com](mailto:PBost@sheppardmullin.com) | [Bio](#)

**SheppardMullin**

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**From:** Paul Bost

**Sent:** Friday, April 23, 2021 10:39 AM

**To:** 'Greg Carr' <[gcarr@carrip.com](mailto:gcarr@carrip.com)>; Jill Pietrini <[JPietrini@sheppardmullin.com](mailto:JPietrini@sheppardmullin.com)>; Beth Anderson <[baanderson@sheppardmullin.com](mailto:baanderson@sheppardmullin.com)>

**Cc:** David Huang <[dhuang@carrip.com](mailto:dhuang@carrip.com)>; trademarks <[trademarks@carrip.com](mailto:trademarks@carrip.com)>

**Subject:** RE: CONFIDENTIAL SETTLEMENT COMMUNICATION - U.S. Trademark Application No. 88583445 for MIGHTY MAX

Dear Greg:

Mattel produced over 12,000+ pages of documents yesterday. Our paralegal Adalberto Huerta emailed them to you and David yesterday. If you did not receive them, please check your spam folder. If the emails are caught in your spam folder, you may want to adjust your settings on your spam folder so that it allows all messages from a shepparmullin.com email address. If you still do not have them, let us know and we can again send them through a FTP file transfer to you.

I will respond regarding the protective order today.

You may have meant to say that Ms. McCormack's decision was "clear." Either way, we believe that the order was "unclear" and will assess it when it issues. As we've said before, we do not believe that given the suspension of the matter, Traxxas can file a motion to compel. In any event, we are working diligently to produce documents and are not delaying our efforts, although as we have stated before, we do not believe that Mattel's documents are relevant to any of the pending motions before the Board.

Best,

Paul

**Paul Bost**

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**SheppardMullin**

# **EXHIBIT F**

## David Huang

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**From:** Paul Bost <PBost@sheppardmullin.com>  
**Sent:** Tuesday, May 25, 2021 5:44 PM  
**To:** Greg Carr; Jill Pietrini; Beth Anderson  
**Cc:** David Huang; trademarks  
**Subject:** RE: CONFIDENTIAL SETTLEMENT COMMUNICATION - U.S. Trademark Application No. 88583445 for MIGHTY MAX

Dear Greg:

Mattel will oppose any motion filed by Traxxas on the grounds that the matter is currently suspended. Also, through no fault of Mattel, the parties have still not agreed to the terms of a stipulated protective order governing the use of confidential information in the proceeding.

Best,

Paul

**Paul Bost**  
+1 310-228-2249 | direct  
[PBost@sheppardmullin.com](mailto:PBost@sheppardmullin.com) | [Bio](#)

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**From:** Greg Carr <gcarr@carrip.com>  
**Sent:** Friday, May 21, 2021 4:22 PM  
**To:** Paul Bost <PBost@sheppardmullin.com>; Jill Pietrini <JPietrini@sheppardmullin.com>; Beth Anderson <baanderson@sheppardmullin.com>  
**Cc:** David Huang <dhuang@carrip.com>; trademarks <trademarks@carrip.com>  
**Subject:** RE: CONFIDENTIAL SETTLEMENT COMMUNICATION - U.S. Trademark Application No. 88583445 for MIGHTY MAX

Dear Paul:

The discussion below is not a reason for Mattel to continue to withhold documents under a claim of confidentiality. As you know, the standard protective order published by the TTAB is in effect regardless of whether the parties agree to different terms of a protective order.

The TBMP makes clear claims of confidentiality are not a valid basis for not producing documents and responding fully to discovery.

Please produce all documents and supplement all interrogatory responses being withheld under claims of confidentiality, by Wednesday, May 26, 2021. Traxxas will abide by the terms of the TTAB protective order in its handling of such documents and information.

This is intended to be a meet and confer communication. Please let us know if you have any questions or would like to discuss this further.

Traxxas will seek assistance of the Board to compel production and supplementation, if necessary, after Wednesday, May 26, 2021.

Regards,  
Greg

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**From:** Paul Bost <[PBost@sheppardmullin.com](mailto:PBost@sheppardmullin.com)>  
**Sent:** Friday, April 23, 2021 6:17 PM  
**To:** Greg Carr <[gcarr@carrip.com](mailto:gcarr@carrip.com)>; Jill Pietrini <[JPietrini@sheppardmullin.com](mailto:JPietrini@sheppardmullin.com)>; Beth Anderson <[baanderson@sheppardmullin.com](mailto:baanderson@sheppardmullin.com)>  
**Cc:** David Huang <[duang@carrip.com](mailto:duang@carrip.com)>; trademarks <[trademarks@carrip.com](mailto:trademarks@carrip.com)>  
**Subject:** RE: CONFIDENTIAL SETTLEMENT COMMUNICATION - U.S. Trademark Application No. 88583445 for MIGHTY MAX

Greg:

We've reviewed the protective order. The remaining issues are as follows:

- **Paragraph 3:** The revised definition of "independent experts or consultants" is too broad. It prohibits anyone who was ever an employee, officer, member, director, partner, vendor, supplier, customer, third-party contractor, or consultant of a party, a party affiliate, or a competitor of a party from viewing confidential information in their role as an expert. That's virtually anyone in the toy industry. Also, the "recent" qualification is necessary so that individuals who are removed from their position that might have formerly prohibited them from viewing confidential information may now do so with no appreciable risk. We don't understand how Mattel's potential laches claim is relevant to this qualification. Accordingly, we suggest revising the term as follows:

**Independent experts or consultants** include individuals retained by a Party for purposes related to prosecution or defense of the proceeding but who are not current or **recent** former employees, officers, members, directors, partners, vendors, suppliers, customers, third-party contractors, or consultants of: (a) any Party, (b) affiliates of any Party, (c) the attorneys of any Party or its affiliates, or (d) competitors to any Party. **A person is a recent former employee, officer, member, director, partner, or consultant if he or she held the position at issue within the last three years.**

- **Paragraph 5:** I don't understand the added language. If the person held a "prohibited position," he/she can't be an independent expert or consultant. Is the intention to disclose if someone might have had held a prohibited position? I'm sure we can figure out appropriate language, if any, if we can understand your intent.

I'm happy to discuss the above with you at your convenience,

Paul

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**From:** Paul Bost  
**Sent:** Friday, April 23, 2021 10:39 AM  
**To:** 'Greg Carr' <[gcarr@carrip.com](mailto:gcarr@carrip.com)>; Jill Pietrini <[JPietrini@sheppardmullin.com](mailto:JPietrini@sheppardmullin.com)>; Beth Anderson <[baanderson@sheppardmullin.com](mailto:baanderson@sheppardmullin.com)>

# **EXHIBIT G**

## David Huang

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**From:** David Huang  
**Sent:** Friday, July 2, 2021 7:27 PM  
**To:** Paul Bost  
**Cc:** Jill Pietrini; Beth Anderson; Greg Carr; trademarks; trademarkscc@sheppardmullin.com; rludson@sheppardmullin.com; MDaner@SheppardMullin.com  
**Subject:** RE: Traxxas, L.P. v. Mattel, Inc. - Traxxas, L.P.'s Supplementary Responses and Production of Documents  
**Attachments:** Traxxas L.P. v. Mattel Inc. - First Set of Supplementary Responses to Applicant's First Set of Interrogatories 7-2-2021.pdf; Traxxas L.P. v. Mattel Inc. - First Set of Supplementary Responses to Applicant's First Set of RFP 7-2-2021.pdf; Traxxas L.P. v. Mattel Inc. Production List 7-2-2021.pdf



David C. Huang  
Attorney and Counselor  
6170 Research Road  
Suite 111  
Frisco, Texas 75033  
Direct: 214.760.3005  
[www.CarrIP.com](http://www.CarrIP.com)

Re: Traxxas, L.P. v. Mattel, Inc.  
Opposition No. 91263510

Dear Paul:

Attached and served today, July 2, 2021, are the following documents:

- OPPOSER TRAXXAS, L.P.'S FIRST SET OF SUPPLEMENTARY RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES (Nos. 11 and 20-22)
- OPPOSER TRAXXAS, L.P.'S FIRST SET OF SUPPLEMENTARY RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS (Nos. 25 and 28)

These supplement Opposer's first set of responses and objections served April 26, 2021 ("Opposer's April 26 Responses") to Applicant's First Set of Request for Production of Documents and Applicant's First Set of Interrogatories.

At the link Redacted for Confidentiality, please find the following production documents of Opposer ("Opposer's Documents") responsive to Applicant's First Set of Requests for Production of Documents and Interrogatories:

- Docs. TRAX-MATT-000001-000140 – Uses
- Docs. TRAX-MATT-000141-000185 – Ads and Publications
- Docs. TRAX-MATT-000186-000574 – **Confidential AEO** - Third-party correspondence
- Docs. TRAX-MATT-000575-000596 – Other Marks

- Docs. TRAX-MATT-000597-001166 – Prosecution Histories
- Docs. TRAX-MATT-001167-001251 – **Confidential AEO** - Third-party agreements
- Docs. TRAX-MATT-001252-001424 – Catalogs and Price Information
- Docs. TRAX-MATT-001425-001431 – Proceedings and Suits
- Docs. TRAX-MATT-001432-001436 – Third-party Use

These documents may be downloaded for your records.

Attached to this email is a PDF document file titled “Traxxas L.P. v. Mattel Inc. Production List 7-2-2021” identifying the specific requests and interrogatories the production documents identified above respond to.

Please note Vols. 3 and 6 of Opposer’s Documents, Bates Nos. **TRAX-MATT-000186 to TRAX-MATT-000574**, and **TRAX-MATT-001167 to TRAX-MATT-001251**, respectively, include documents designated as **Confidential – Attorneys’ Eyes Only (Trade Secret/Commercially Sensitive)**. As such, these documents are being produced by Opposer subject to and in accordance with the Standard Protective Order automatically set in place by the Board (TBMP 412.01).

Please also proceed to produce all documents and supplement all interrogatory responses being withheld by Mattel under claims of confidentiality, by **Friday, July 9, 2021**. As previously discussed, the Board’s suspension of proceedings in its Order of April 23, 2021 makes clear the suspension does **not** toll responding to outstanding discovery requests. We believe this includes producing documents and supplementing interrogatory responses with information withheld as being confidential to such discovery requests. Also, as mentioned above, because the Standard Protective Order is automatically set in place by the Board in the proceeding, Traxxas will abide by the terms of the order in its handling of such documents and information from Mattel.

Lastly, we note the parties have not provided the required verification for responses to respective Interrogatories. We are working on getting Traxxas’s verification for Opposer’s April 26 Response as well as OPPOSER FIRST SET OF SUPPLEMENTARY RESPONSES TO APPLICANT’S FIRST SET OF INTERROGATORIES (Nos. 11 and 20-22) attached hereto. We will forward both verifications to you as soon as possible upon receipt from Traxxas. In this regard, please also let us know when we can expect to receive Mattel’s verification of its responses to Opposer’s First Set of Interrogatories, as well.

Please let us know at your earliest convenience if you have any questions about the above or would like to discuss this further.

Regards,

David Huang

Protecting your share of the marketplace.®



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